TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 499

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER

vs.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED NOVEMBER 2, 1939

CERTIORARI GRANTED DECEMBER 11, 1939

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 499

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

vs.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Proceedings in United States Court of Appeals for the District of Columbia	1	1
Notice of appeal from decision of Federal Communications Commission	1	1
Statement of reasons for appeal	1	1
Amendment to notice of appeal	3	3
Notice of the Telegraph Herald of intention to intervene	4	4
Statement in writing of the facts, grounds for decision and record before Commission	7	6
Application of Telegraph Herald for construction permit	8	6
Financial statement of Telegraph Herald as of December 1, 1935	17	14
List of officers, directors, and stockholders of Telegraph Herald	18	15
Report of engineer in connection with Telegraph Herald application	19	16
Minute #353—Application designated for hearing	23	20
Notice of hearing	24	20
Petition to intervene filed by the Sanders Brothers Radio Station	27	22
Minute #398—Petition to intervene granted	29	24
Application of Sanders Brothers Radio Station for permit	30	25

	Original	Print
Proceedings in United States Court of Appeals for the District of Columbia—Continued.		
Statement in writing of the facts, grounds for decision and record before Commission—Continued.		
Statement of evidence	40	33
Caption and appearances	40	33
Colloquy	40	34
Testimony of William J. Arndt	42	35
Joseph A. Burch	115	97
John H. Barron	119	100
John H. Barron (recalled)	133	111
E. G. Page	133	112
George C. Davis	157	132
Walter E. Klauer	167	140
James D. Carpenter	193	162
W. J. Arndt (resumed)	229	192
James D. Carpenter (resumed)	236	197
Deposition of Kermith S. Huehn	239	199
Floyd E. Pratt	250	208
John W. Gillis	257	214
Ben H. Walker	264	220
Frank E. Ralph	278	231
F. L. Burns	286	238
Charles F. Martin	291	242
Mary A. Meyer	302	251
Dale D. Welch	309	258
Frank R. Kerrigan	320	267
Msgr. J. M. Wolfe	323	269
Sister Mary Carlos	334	279
Earl D. Cline	339	283
A. C. Kleine	341	285
Edward J. Schroeder	350	292
Joseph Flynn	354	296
Doris McCaffrey	358	299
Dr. W. J. Connell	361	302
Rev. Hugh D. Atchison	365	305
Roy Combs	368	308
L. Walter Dick	374	313
Thomas J. Ryder	379	317
Msgr. Thomas Conry	387	324
H. R. Brunnemeyer	393	329
Dr. Emil H. Rausch	402	337
Deposition of H. R. Brunnemeyer	409	342
Telegraph Herald Exhibits:		
#3—Retail and wholesale outlets in Dubuque, Iowa	418	350
#4—Tentative program schedule for one week of proposed station	419	351
#5—List of additional program material in Dubuque, Iowa	428	358

Proceedings in United States Court of Appeals for the District of Columbia—Continued.
Statement in writing of the facts, grounds for decision and record before Commission—Continued.
Statement of evidence—Continued.

	Original	Print
#6—List of business houses actually contacted	429	360
#7—Measurements of broadcast signals at various distances from Dubuque	431	361
#8—Map showing calculated service areas of proposed station	437	364
#9—Calculated populations within various contours of proposed station	439	364
#10—Chart showing available service from other stations in area	439	365
#11—List showing WKBB broadcast for September 6, 1936	440	365
WKBB Exhibits:		
#9—Map showing field intensity contours	443	367
#10—Map showing calculated field intensity contours	445	367
#11—Chart showing population data with certain contours of WKBB	447	367
#12—Chart showing daytime service at Dubuque, Iowa	448	368
#13—Balance sheet of Sanders Brothers Radio Station as of Aug. 31, 1936	449	369
#14—Profit and loss statement for 8-month period ending Aug. 31, 1936	450	369
#15—Estimated cost of moving WKBB from Dubuque, Ill., to Dubuque, Iowa	451	370
#16a—WKBB personnel	451	370
#18—Break-down of network and local time on WKBB—Aug. 30-Sept. 12, 1936	452	371
#19—Talent and transcription analysis	452	371
#20—Program analysis	452	371
#21—Commercial analysis	453	371
#22—WKBB program analysis	453	372
#24—WKBB program analysis	458	375
#26—WKBB accounts in 1936	459	375
#27—Past WKBB contracts	459	377
#28—Prospective advertisers never having used WKBB	460	379
#29—WKBB local advertising rates	461	380
Examiner's Report No. I-310	462	380
Exceptions to Examiner's Report and request for oral argument	486	400
Minute #441—Request for oral argument granted	490	404
Stipulation as to record	490	404
Minute #540—Applications granted	492	406

	Original	Print
Proceedings in United States Court of Appeals for the District of Columbia—Continued.		
Statement in writing of the facts, grounds for decision and record before Commission—Continued.		
Order granting applications of Sanders Brothers Radio Station and Telegraph Herald	494	407
Minute #546—Ratifications	495	408
Statement of Facts and Grounds for Decision of Commission	496	409
Petition to extend effective date	505	416
Minute #551—Petition to extend effective date denied	506	418
Notice and demand filed by Sanders Brothers Radio Station	507	418
Minute #550—Notice and demand denied	509	420
Petition for rehearing	510	421
Opposition to petition for rehearing	531	436
Supplemental affidavit in support of opposition to petition for rehearing	550	452
Reply to opposition to petition for rehearing	552	454
Minute #588—Petition for rehearing, denied	569	468
Certificate of Secretary of Federal Communications Commission	569	469
Joint designation of record for printing	570	469
Opinion, Miller, J	572	471
Judgment	579	477
Memorandum re petition for rehearing, etc	580	478
Order denying rehearing, etc	581	478
Designation of record	582	478
Clerk's certificate [omitted in printing]	583	479
Order allowing certiorari	584	479

1 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 7087

SANDERS BROTHERS RADIO STATION, A CORPORATION, APPELLANT

vs.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Notice of appeal

Filed Dec. 14, 1937

Sanders Brothers Radio Station, an Illinois corporation and licensee of Radio Broadcast Station WKBB, East Dubuque, Illinois, hereby gives notice of its appeal from a decision of the Federal Communications Commission, rendered July 2, 1937, granting an application of Telegraph Herald for a construction permit authorizing the construction and operation of a radio broadcast station at Dubuque, Iowa, on 1340 kc., 500 watts, daytime only.

In support of its appeal appellant assigns the reasons hereinafter set forth:

Statement of reasons for appeal

1. The Commission erred in failing to find that there is inadequate and insufficient economic support in Dubuque, Iowa, for the station proposed by the Telegraph Herald.

2. The Commission erred in failing to find that the operation of the station proposed in Dubuque, Iowa, by the Telegraph Herald will result in a financial and economic injury to the appellant, will result in a large loss of operating revenue to the appellant, will further increase its net losses, will impair the service rendered by the appellant to its listening audience, and will destroy the ability of the appellant to render programs of high type and in the public interest.

3. The Commission erred in failing to find that the appellant, which has in the past lost large sums of money through the operation of its station and which is at present failing to earn sufficient money to pay its operating expenses and fixed
2 charges, will lose even greater sums by the operation of the station proposed by the Telegraph Herald.

4. The Commission erred in failing to make any finding with reference to the economic effect upon the appellant by the granting of the application of the Telegraph Herald.

5. The Commission erred in finding that there is a need in the Dubuque, Iowa, area for the service proposed by the Telegraph Herald.

6. The Commission erred in failing to find that the service rendered by appellant and by other stations rendering service to the Dubuque, Iowa, area is adequate.

7. The Commission erred in finding that the service area of the station proposed by the Telegraph Herald will be larger than the service area of appellant's station.

8. The Commission erred in denying appellant's request that it be served with copies of the supplemental report of the examining department and reports of the law department and engineering department which were submitted to the Broadcast Division for its consideration in reaching a determination upon the issues involved.

9. The Commission erred in considering the supplemental report of the examining department and reports of the law department and engineering department without serving such reports upon the appellant and giving it the opportunity to make answers thereto.

10. The Commission is without jurisdiction or power to render the decision and final order of July 2, 1937, without having, either at the time thereof or at any time prior thereto, made or formulated any findings of fact in support of its decision. The order of the Commission entered July 2, 1937, not being supported by findings contained therein or findings made concurrently therewith, is void. Said decision and order were made and entered in violation of the Communications Act of 1934, as amended, particularly Sections 5, 307 (a), 309 (a), 319 (a), and 402 (b) of said Act, and in violation of Article III, Section 1 and Article I, Section 1 of the Constitution of the United States, and constitute a deprivation of appellant's property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

11. The Commission erred in failing to find by written findings made prior to or concurrently with entry of the decision and issuance of the final order that the granting of
3 the application of the Telegraph Herald would adversely affect the interests of Sanders Brothers Radio Station, licensee of WKBB, and will not serve public interest, convenience, and necessity.

Wherefore, Appellant prays for judgment of this Honorable Court reversing said decision of the Commission and granting such other relief as to the Court may seem just and proper.

SANDERS BROTHERS RADIO STATION,
By LOUIS G. CALDWELL,
REED T. ROLLO,
PERCY H. RUSSELL, JR.,

914 National Press Building, Washington, D. C.

DECEMBER 14, 1937.

ACKNOWLEDGMENT OF SERVICE

Receipt of a true copy of the foregoing Notice of Appeal and Statement of Reasons Therefor is acknowledged this 14th day of December, 1937.

FEDERAL COMMUNICATIONS COMMISSION.
By WALTER JOHNSON.

[File endorsement omitted.]

In United States Court of Appeals for the District of Columbia

[Title omitted.]

Amendment to notice of appeal

Filed March 17, 1938

Now comes Sanders Brothers Radio Station, an Illinois corporation and appellant in the above-entitled cause, by its attorneys, and amends its Notice of Appeal by adding on page 1 at the close of the first paragraph the following:

"On August 10, 1937 the appellant filed with the Commission a Petition for Rehearing of the decision of July 2, 1937, effective July 27, 1937, granting the application of Telegraph Herald, and on December 8, 1937 appellant's Petition for Rehearing was denied by the Commission."

SANDERS BROTHERS RADIO STATION,
By LOUIS G. CALDWELL,
REED T. ROLLO,
PERCY H. RUSSELL, JR.,
Its Attorneys,
914 National Press Building, Washington, D. C.

ACKNOWLEDGMENT OF SERVICE

Receipt of a true copy of the foregoing Amendment to Notice of Appeal is acknowledged this 9th day of March, 1938.

FEDERAL COMMUNICATIONS COMMISSION.
By J. NEYMAN,
TELEGRAPH HERALD.
By ELIOT C. LOVETT,
Per M. S.

[File endorsement omitted.]

In United States Court of Appeals for the District of Columbia

[Title omitted.]

Notice of intention to intervene

Filed Jan. 7, 1938

Comes now the Telegraph Herald, a corporation organized and existing under the laws of the State of Iowa, by its attorney, and, pursuant to Section 402 (d) of the Communications Act of 1934, as amended, and not admitting the propriety of the appeal herein but specifically reserving every right to move to dismiss the same or otherwise to question its validity, files this its Notice of Intention to Intervene in the above entitled proceeding and, in support hereof, respectfully submits the following—

STATEMENT OF INTEREST

1. The said cause is an appeal under Section 402 of the Communications Act of 1934, as amended, from a decision of the Federal Communications Commission rendered July 2, 1937 (Commission Docket No. 3967), granting an application of this intervener, Telegraph Herald, for a permit to construct a radio broadcasting station to operate daytime only in Dubuque, Iowa, on 1340 kilocycles with 500 watts power. The call letters KDTH were assigned to the proposed station.

2. The appellant appeared as a respondent in the proceeding upon the application of this intervener before the Commission, from whose decision the appeal was taken in the above entitled cause.

3. This intervener is interested in the appeal in said cause to the extent that a reversal or modification of the decision of which appellant complains would aggrieve it and adversely affect its

interests for the reason that it would thereby be deprived of the permit which it now possesses to construct station KDTH by virtue of the action of the Commission in granting its application.

Respectfully submitted.

TELEGRAPH HERALD, *Intervener*,
By ELIOT C. LOVETT,
Its Attorney,
729 Fifteenth Street, Washington, D. C.

[*Duly sworn to by Eliot C. Lovett; jurat omitted in printing.*]

6 NOTICE OF FILING

To LOUIS G. CALDWELL, REED T. ROLLO, and PERCY H. RUSSELL, Jr., *914 National Press Building, Washington, D. C., Attorneys for Appellant*, and HAMPSON GARY, *New Post Office Building, Washington, D. C., General Counsel for the Federal Communications Commission.*

Please take notice that the foregoing Notice of Intention to Intervene, together with the Statement of Interest, will be filed forthwith in the United States Court of Appeals for the District of Columbia.

TELEGRAPH HERALD, *Intervener*,
By ELIOT C. LOVETT,
Its Attorney,
729 Fifteenth Street, Washington, D. C.

ACKNOWLEDGMENT OF SERVICE

Receipt of a true copy of the foregoing Notice of Intention to Intervene, together with the Statement of Interest, is acknowledged this 6th day of January 1938.

REED T. ROLLO,
Attorney for Appellant.
HAMPSON GARY,
By F. U. F.
Attorney for Federal Communications Commission.

7 [File endorsements omitted.]

In United States Court of Appeals for the District of Columbia

[Title omitted.]

Statement in writing of the facts and grounds for the decision of the Federal Communications Commission as found and given by it, order of the Federal Communications Commission and record before it in the matter of the applications of Telegraph Herald and Sanders Brothers Radio Station for construction permits

Filed Jan. 13, 1938

Now comes the Federal Communications Commission, pursuant to Section 402 (c) of the Communications Act of 1934 and files this, its statement in writing of the facts and grounds for the decision as found and given by it, its order, and the record before it in the matter of the applications of Telegraph Herald and Sanders Brothers Radio Station, Dubuque, Iowa, for construction permits.

FEDERAL COMMUNICATION COMMISSION,
By T. J. SLOWIE, *Secretary.*

8 Federal Communications Commission. Jan. 20, 1936.
Received 3rd Mail. Mail and Files.

FCC Form No. 301. File No. B4–P–960. Call letters NEW

United States of America

Federal Communications Commission

Application for radio broadcast station construction permit or modification thereof

(Submit in duplicate to Federal Communications Commission, Washington, D. C. Swear to one copy)

To the Federal Communications Commission:

1. Name of applicant:[1] Telegraph Herald.

2. Post-office address: State, Iowa. City, Dubuque. Street and number, Eighth Avenue and Bluff Street.

[1] If a corporation, state corporate name; if a partnership, state names of all partners and the name under which the partnership does business; if an unincorporated association, state the name of an executive officer, the office held by him, and the name of the association. The same name or names should be signed in the place provided at the end of application, except that in the case of a partnership, the application may be signed in the name of the partnership by one of the partners.

3. Is this application made for—

(a) Authorization to construct new radio station? Yes.

(b) Authorization to change present location of transmitter of existing station? ----------

(1) What is distance in miles between present location and proposed location of transmitter? ----------

(c) Authorization to change maximum rated carrier power, which necessitates installation of new equipment? ----------

(1) Applicant represents that present maximum rated carrier power is ---------- watts.

(2) Applicant represents that proposed maximum rated carrier power is ---------- watts.

(d) Authorization to install new equipment? ----------

(1) Indicate what new equipment is to be installed (check):

(a) New transmitter ----------

(b) Change in system of modulation ----------

(c) Change in type or number of vacuum tubes in last radio stage ----------

(d) Other changes (specify): ----------

4. What is applicant's principal business? Newspaper Publishing and Printing.

5. Is applicant a citizen of the United States? ---------- If so, state whether by birth or naturalization ----------

6. Is the applicant a representative of an alien or foreign government? ----------

7. State whether applicant is a corporation, partnership, or association Corporation

8. If applicant is a corporation—

(a) Under laws of what State or country is it organized? Iowa (Certificate on file in connection with application to move KWLC to Dubque.)

(A certified copy of the articles of incorporation shall be attached if not heretofore filed with the Commission.)

(b) Is more than one-fifth of capital stock owned of record or may it be voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? No.

(c) Is any director or officer an alien? No. If so, state name and position of each ----------

(d) Give names and addresses of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each Fred W. Woodward 51%; Joseph C. Quigley 24%. Both Dubuque, Iowa.

(e) Is stock to be sold after this permit is issued for purpose of raising money to construct and/or operate the proposed station? No.

If applicant is a corporation, is applicant directly or indirectly controlled by any other corporation? No.

(a) If so, give name and address of such controlling corporation _____

(b) Under laws of what State or country is such corporation organized? _____

(A certified copy of the articles of incorporation shall be attached if not heretofore filed with the Commission.)

(c) Is more than one-fourth of capital stock of such corporation owned of record or it may be voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? _____

(d) Is any director or officer of such corporation an alien? _____ If so, state name and position of each _____

(e) Is the above-described controlling corporation in turn a subsidiary? _____ If so, attach additional sheets answering questions 9 (a) to (d), inclusive, for each company to and including the organization having final control.

10. If application is made in behalf of an unincorporated association, state—

(a) Purpose of the association _____

(A certified copy of the articles of association, or by-laws, shall be attached if not heretofore filed with the Commission.)

(b) The number of members _____

(c) Whether any members are aliens _____

(d) If so, state name and position of each _____

11. (a) Is applicant directly or indirectly, through stock ownership, contract, or otherwise, interested in the ownership or control of any other radio broadcasting stations? No.

If so, state call letters and location of such stations _____

(b) Has the applicant in the past been directly or indirectly interested in the ownership or control of any radio broadcasting stations? No.

If so, state call letters and location of such stations _____

12. (a) State applicant's relation to station (whether applicant is to be owner or lessee, and, if neither owner nor lessee, state nature of applicant's interest in use and control of station. Owner.

(If not owner, a copy of agreement showing applicants interest in station must be attached if not heretofore filed with the Commission.)

(b) If applicant is not to be owner of station, who is? _____

(c) Will applicant have absolute control of station, both as to physical operation and programs broadcast? Yes.

If not, attach copy of any contract which may in any way affect applicant's right to do so.

11 13. List assets and liabilities and state fully the facts showing applicant's financial responsibility with respect to the construction and operation of station. See attached statement.

14. (a) Has the applicant been finally adjudged guilty by any Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication directly or indirectly through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or any other means, or of unfair methods of competition? No.

(b) Is applicant directly or indirectly controlled by any party finally adjudged guilty as above stated? No.

15. The frequency, power, and hours of operation requested for the proposed station are as follows:

(a) Frequency 1340 kilocycles.

(b) Power (night) None watts.

(c) Power (day) 500 watts.

(d) Hours of operation:

(1) Unlimited ----------

(2) Daytime only. Yes.

(3) Limited ----------

(4) Sharing with (specify stations) ----------

(5) Other (specify) ----------

(e) State number of hours per day proposed station will operate. Not less than 8 hours.

(f) Does the application directly request the assignment of all or any part of the facilities (i. e., frequency, power, and/or hours of operation) now assigned to any other station or stations? No.

If so, specify the station or stations and the facilities requested to be withdrawn therefrom.

16. Description of transmitting apparatus proposed to be installed. (Specifications and drawings on file with the Commission.)

(a) Make. Collins. Type no. 20-A.

(b) Oscillator: Type of circuit ---------- Number, manufacturer's name, and type of tubes ---------- Normal plate current, per tube ---------- Plate voltage ----------

(c) List buffer and intermediate power amplifier stages, by number and type of tubes in each stage ----------

12 (d) Last radio stage: Number, manufacturer's name, and type of tubes ---------- Normal night operation for power requested: Plate current, per tube ---------- Plate voltage ----------

If greater day power than night power is requested, specify the following:

Normal day operation: Plate current, per tube _____ Plate voltage _____

Describe fully the proposed method and procedure of reducing power at sunset _____

(e) Modulator or last audio stage: Number, manufacturer's name, and type of tubes and how operated:

(Class "A," "A Prime," or "B") _____

Normal plate current, per tube _____ Plate Voltage _____

(f) Which radio stage is modulated? _____

(g) What system of modulation is employed (high level, low level, grid bias in last radio stage, etc.)? _____

(h) If low-level modulation is employed, give for modulated radio stage: Number and type of tubes _____ Plate current, per tube _____ Plate voltage _____

(i) The transmitter is designed for what maximum percentage of satisfactory modulation? _____

(j) What modulation measuring device will be used to determine that this percentage of modulation is obtained? _____

(k) Specify manufacturer's name, type, number, and full scale reading of the following meters:

(1) In last radio stage:

Plate voltmeter _____

Plate ammeter _____

(2) Antenna ammeter _____

(l) Describe the plate power supply for last stage _____

Rating: Current _____ Voltage _____

(m) Maximum carrier power output of transmitter for satisfactory operation is 500 watts.

(n) Maximum rated carrier power of transmitter as determined by orders of the Federal Communications Commission is 500 watts.

17. (a) Type of antenna Vertical Radiator:

(b) Height of vertical lead 185 feet.

(c) Length of flat top (if any) _____ feet.

(d) If not fully described above, give complete details _____

(e) Counterpoise (if used)—type and dimensions _____

13 (f) Antenna ground (if used)—how obtained? 120 radials each 185 ft. long.

18. Applicant represents (1) that there is attached or (2) that there has been heretofore filed with the Commission, an accurate schematic diagram of the fundamental radio and audio circuits of the transmitter proposed, including antenna and

ground or counterpoise connections, antenna feed system, and that it indicates the type of tubes.

(This should be a blueprint or ink drawing, and, if possible, the size of this application, and attached hereto.)

19. (a) State what apparatus is included as an integral part of the transmitter that will automatically hold frequency within the required limits _____.

(b) Within how many cycles of the assigned frequency is this apparatus designed and guaranteed to hold the operating frequency? _____.

(c) State manufacturer's name and type number of this frequency-control apparatus _____.

(d) State whether or not frequency-control apparatus is automatically maintained at constant temperature _____.

(1) If so, state manufacturer's name and rated accuracy of the thermostat _____. Of the thermometer _____.

(2) Attach the circuit diagram of automatic temperature control system if not already on file with the Commission.

(3) Attach a sketch or drawing of the automatic temperature control chamber, if not already on file with the Commission.

(e) State name and type number of separate frequency monitor RCA EX-4180.

(f) Give Federal Communications Commission approval number 1454.

20. Cost of proposed station: Transmitter, $10,000. Studio, $3,500. Other items (state nature) Transmitter House, Antenna System, Furnishings, etc., $7,500.

21. Proposed location of transmitter: State, Iowa. County, Dubuque.

City or town, Near Dubuque, Iowa. Street and number. To be determined.

14 N. latitude: Degrees _____, Minutes _____, seconds _____.

W. Longitude: Degrees _____, minutes _____, seconds _____.

22. Number of persons residing within various distances of proposed location of transmitter is as follows:

0.4 mile _____, 1 mile _____, 2 miles _____, 3 miles _____, 5 miles _____, 8 miles _____.

23. (a) Number of broadcasting stations (by call letters) located within various distances of proposed location of transmitter is as follows:

1 mile ----------, 2 miles ----------, 3 miles ----------, 8 miles ----------.

(b) Number of nonbroadcasting (commercial or Government) Receiving stations located within various distances of proposed location of transmitter is as follows:

1 mile ----------, 2 miles ----------, 3 miles ----------.

24. (a) Name and give location of all Airports within 10 miles of proposed location of transmitter ----------.

(b) Give distance from proposed location of transmitter to each of such airports ----------.

(c) Name and give distance to any established airways within 10 miles of proposed location of transmitter ----------.

(d) Give maximum height (in feet) of towers above ground level 195 ft.

(e) Will towers be painted and marked with signal lights to conform with specifications of Department of Commerce (See Aeronautics Bulletin No. 9)? Yes.

(f) If application is for new station or change of transmitter location of existing station, attach map showing present location, proposed location, character of the surrounding area (retail or wholesale business, manufacturing, residential, or unpopulated; also, density of population, type of soil and terrain) and the location of airports, airways, and other radio stations, including receiving stations, except broadcast or amateur.

25. Proposed location of main studio: State, Iowa. County, Dubuque.

City or town, Dubuque. Street and number, Eighth Ave. and Bluff Street.

Other studios maintained by station ----------.

15 26. Average percentage of time expected to be devoted monthly to following services:

Commercial Programs:

(1) Entertainment, 25%.
(2) Educational, 2%.
(3) Religious ----------
(4) Agricultural, 3%.
(5) Fraternal ----------
(6) ----------
(7) ----------

Sustaining Programs:

(1) Entertainment, 25%.
(2) Educational, 15%.
(3) Religious, 3%.
(4) Agricultural, 15%.
(5) Fraternal, 2%.

(6) News broadcast, 10%.
(7) ----------

27. (a) Does applicant expect to obtain programs from what is known as a "chain"? No.

(b) Name of chain or chains ----------

(c) What will be the percentage of total time proposed to be used for chain programs (i. e., programs, both paid and sustaining, which are duplicated by any other station)? ----------

(d) What will be the percentage of total time proposed to be used for mechanical reproduction (i. e., phonograph records, electrical transcriptions, player piano, etc.)? 20%

(a) State the objects to be attained by the construction, or changes in construction, for which application is made to provide radio service for the Dubuque trade area and to further the interests of the industrial and agricultural population ----------

(b) State definitely what service will be rendered by the proposed station which is not now available to the community which it expects to serve. Programs designed especially for the advancement of the educational and agricultural interests of the area.

29. If the construction permit is granted, the construction will be commenced within 60 days of the granting thereof and will be completed and the station ready for operation with 180 days thereafter.

30. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of
16 the same, whether by license or otherwise, and requests a construction permit in accordance with this application.

Dated this 18th day of January, 1936.

TELEGRAPH HERALD
(Must correspond with item 1),
Applicant.
By F. W. WOODWARD,
Agent.

(Be sure all necessary information is furnished)

STATE OF ----------
County of ---------- *ss:*

----------, being first duly sworn upon his oath, affirmed according to law, deposes and says that he is the ----------
(If applicant is not an individual, state relation of affiant to applicant)

above-named applicant, and that the facts stated in the foregoing application and all exhibits attached thereto are true of

his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

_____ _____

Affiant.

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL]

_____ _____

Notary Public.

(Notary Public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires _____

Insert for F. C. C. Form No. 301

(These questions must be answered)

No. 4 (a). What other business or businesses is applicant directly or indirectly interested in; explain fully? _____

17 No. 4 (b). If applicant is a corporation, what other business or businesses are the officers, directors, or principal stockholders directly or indirectly interested in; explain fully? (Attach additional sheets if necessary). All officers, directors, and principal stockholders are exclusively interested in the newspaper publishing business.

TELEGRAPH-HERALD—STATEMENT OF DECEMBER 1, 1935

ASSETS

First National Bank	$37,386.13
Consolidated National Bank	340.23
Petty Cash	200.00
Post Office Deposit	288.32
Notes Receivable	3,150.42
Accts. Receivable, Newspaper Adv.	34,473.65
Accts. Receivable, Job Dept.	24,031.44
Miscellaneous Accts. Receivable	13,172.34
Investments	20,250.62
Inventory	16,974.28
Real Estate and New Bldg.	350,047.94
Machinery and Equipment	191,539.14
Furniture and Fixtures	18,683.82
Type, Cuts, Etc	4,173.55
Automobiles	3,228.10
Insurance Paid in Advance	1,900.99
Patents, Franchises, & Good Will	41,365.46
Circulation Structure	233,984.26
Times Journal Purchase Stock	102,521.67
Total	$1,097,712.36

LIABILITIES

Accounts Payable	$3,836.88
Reserve for Depreciation, Mach. & Equip.	130,521.33
Reserve for Taxes	7,970.78
Surplus	795,383.37
Capital Stock, Preferred	40,000.00
Capital Stock, Common	120,000.00
Total	$1,097,712.36

18 [Endorsed:] Federal Communications Commission Apr. 4, 1936. Received Mail. Mail and Files.

STATE OF IOWA,
Dubuque County, ss:

I, C. L. Woodward, being first duly sworn, on oath depose and state that I am Secretary of Telegraph-Herald, a corporation under the laws of Iowa with its principal place of business at Dubuque, Iowa; that the following is a true and correct list of the stockholders of said corporation and the number of shares held by each, to-wit:

Common Stock:	Shares
F. W. Woodward	811
J. C. Quigley	379
Mrs. Ann Murphy	10
	1,200

Preferred Stock:	Shares
St. Mary's Orphan Home	50
Mt. Pleasant Home	50
The Society of St. Vincent de Paul	50
Finley Hospital	50
St. Joseph's Mercy Hospital	50
The House of the Good Shepherd	50
Dubuque Boy's Welfare Association	50
St. Anthony's Home for the Aged	50
	400

The following is a true and correct list of the Directors of said corporation, to-wit: F. W. Woodward, Elsie M. Woodward, F. R. Woodward, C. L. Woodward, J. C. Quigley, W. J. Arndt, M. R. Kane.

That the following are the officers of said corporation, to-wit: F. W. Woodward, President and Business Manager; J. C. Quigley, Vice President; C. L. Woodward, Secretary; F. R. Woodward, Treasurer.

C. L. WOODWARD, *Sec.*

Subscribed in my presence and sworn to before me by the said C. L. Woodward this 28th day of March, A. D. 1936.

ROBT. W. CLEUREE,
Notary Public in and for Dubuque County, Iowa.

Report of John H. Barron in connection with the application of the Telegraph Herald, Dubuque, Iowa

I am a consulting radio engineer, with offices in the Earle Building, Washington, D. C., and have been engaged by the Telegraph Herald, of Dubuque, Iowa, to prepare a report to be associated with and made a part of the application for radio broadcast station construction permit, which is being filed with the Federal Communications Commission.

My experience in radio engineering matters consist in part of approximately 5½ years as a radio inspector of the U. S. Department of Commerce and 5½ years as a radio engineer in the broadcast section of the Federal Radio Commission and the Federal Communications Commission. My education was obtained at the Baltimore Polytechnic Institute and the Johns Hopkins University, Baltimore, Maryland.

The Telegraph Herald has filed an application for authority to erect a new broadcast station to be located at or near Dubuque, Iowa, to be operated on regional frequency 1340 kc. with power of 500 watts and daytime hours of operation. This report is submitted on certain aspects involving the estimated coverage of the station, the estimated daytime service already available in the city of Dubuque and surrounding territory and the questions of interference.

ESTIMATED COVERAGE

It is proposed to install at this new station an antenna consisting of a single vertical radiator, one-fourth wave length, or approximately 185 feet in height. The ground system to be installed will consist of a buried system of copper wires consisting of not less than 120 radials extending outward from the base of the vertical radiator for a distance of at least 185 feet. These radials will be buried in the ground not over 6 inches deep and will be spaced in an angular manner 3.0 degrees apart.

The location at which the antenna and transmitting plant will be installed will be determined by suitable surveys in the event that the application is granted.

It is estimated that the antenna to be installed will produce an unattenuated field intensity at a distance of 1 mile of approximately 124 millivolts per meter. This is based upon an assumed dead loss of 10 ohms.

It is estimated that the conductivity of the area around Dubuque, Iowa, is approximately 10–13 emu. and that the inductivity is 15 esu. Based upon the Sommerfeld theory of propagation, it is estimated that the proposed station will render the following field intensities at the distances indicated.

10	mv/m Business Sections of Cities	7.9 miles
2	mv/m Residential Sections of Cities	20.0 miles
0.5	mv/m Rural areas	35.0 miles

ESTIMATED SERVICE AVAILABLE IN DUBUQUE FROM EXISTING STATIONS

The following table has been prepared to indicate the field intensities which it is estimated that existing stations will place into the city of Dubuque. Those estimates are based upon the following assumptions: Conductivity of 10–13 emu., inductivity of 15 esu., Sommerfeld theory of propagation, and antenna efficiencies for stations operating on clear channel frequencies power 5 kw. to 50 kw. 200 millivolts per meter; regional stations power 250 watts to 2.5 kilowatts 150 millivolts per meter and local stations power of 100 watts and 250 watts 125 millivolts per meter.

21

Station	Location	Frequency	Day power	Distance	Estimated MV/M
				Miles	
IOWA					
WMT	Cedar Rapids	600	2.5 kw	58	1.70
W8UI	Iowa City	880	1 kw	73	.280
WOC	Carter Lake	1,370	250 w	66	.045
WOCA-KWLC	Decorah	1,270	100 w	80	.020
WHO	Des Moines	1,000	50 kw	150	.224
WOI	Ames	640	5 kw	154	.358
ILLINOIS					
WKBB	E. Dubuque	1,500	250	7	5.0
WHBF	Rock Island	1,210	250	70	.050
WMAQ	Chicago	670	50 kw	140	1.6
WGN	Chicago	720	50 kw	138	.700
WBBM	Chicago	770	50 kw	142	.500
WENR-WLS	Chicago	870	50 kw	140	.358
WAAF	Chicago	920	1 kw	163	.024
WCFL	Chicago	970	5 kw	141	.100
WISCONSIN					
WTMJ	Milwaukee	620	5 kw	143	0.265
WHA	Madison	940	2.5 kw	76	.335
WIBA	Madison	1,280	5 kw. cp.	76	.224
MINNESOTA					
WCCO	Minneapolis	810	50 kw	232	0.100

Reference to this table shows that the only station which is estimated to place a signal of 2 millivolts per meter or better into Dubuque is station WKBB at East Dubuque, Illinois. Station WMT, Cedar Rapids, Iowa, is the only other station estimated to render a field intensity approximating 2 millivolts per meter which is required for good service in residential sections of cities and the estimated field intensity of that station is less than 2 millivolts per meter.

With regard to the stations rendering service approximating 0.5 millivolts per meter in the rural areas around Dubuque, stations WMT, WKBB, WMAQ, WGN, and WBBM are the only stations estimated to render a field intensity better than 0.5 millivolts per meter in any substantial portion of the estimated primary service area of the proposed station.

There is no station licensed for operation at the present time which has the main studio located in Dubuque, Iowa. For the best service available in this city during daytime it appears that listeners must depend primarily upon a station operating upon a local frequency, station WKBB. The 1930 census population of Dubuque was 41,679. It appears that the proposed station will be the only station which will render a primary standard of service in the city of Dubuque other than station WKBB.

22

INTERFERENCE PROBLEMS INVOLVED

Reference to the official list of stations of the Federal Communications Commission shows that the following stations are now licensed to operate on 1340 kc. at distances from Dubuque, Iowa, as shown:

Station	Location	Power	Actual	Recommended day
WSPD[2]	Toledo, Ohio	1 kw 2½ kw. day	368	350
KGDY	Huron, S. Dak	250 w	398	260
KGNO	Dodge City, Kans	250 w	590	260
WFEA	Manchester, N. H	500 w 1 kw. day	970	300
WCOA	Pensacola, Fla	500 w	857	260
KGIR	Butte, Mont	1 kw 2½ kw. day	1120	350

As the recommended separation (obtained from publications of the Federal Communications Commission) is exceeded in each instance it appears that the operation as proposed will not result in objectionable interference either being caused to or received from any of the stations now licensed to operate on 1340 kc.

With regard to stations licensed to operate on frequencies 10, 20, 30, and 40 kc., plus or minus, removed from 1340 kc. a search of the official list of stations indicates that there is no station licensed to operate on adjacent frequencies at less distances than that recommended by the engineering department of the Federal Communications Commission in accordance with the published tables.

It is understood that station WSPD has an application pending in which authority is requested to increase the daytime power to 5 kw. for which the recommended separation is 400 miles. The distance from Dubuque, Iowa, to Toledo, Ohio, is 368 miles or 32 miles less than the recommended separation of 400 miles. This is 8% less than that recommended. In view of the fact that the recommended separation is nearly attained and the fact that the attenuation on 1340 kc. is considerably higher than the attenuation on an average frequency approximating 1000 kilocycles, it does not appear that there would be extensive interference
23 received during daytime hours by the Dubuque station from station WSPD. Furthermore, the Toledo station is located a substantial distance in excess of that recommended for the 500 watts power requested for the Dubuque station (260 miles) from which it is apparent that whatever question of interference may be involved concerns the service area of the Dubuque station and not that of station WSPD.

Summarizing, it appears that there is no question of objectionable interference being caused by the operation of the station as proposed, either with existing stations or with applications for additional facilities now pending before the Federal Communications Commission.

(Sgd.) JOHN H. BARRON.

CITY OF WASHINGTON,
District of Columbia, ss:

I, John H. Barron, being first duly sworn, upon oath depose and say that the facts stated in the foregoing report by me subscribed are true of my own personal knowledge except those stated upon information and belief, and those facts I verily believe to be true.

(Sgd.) JOHN H. BARRON.

Subscribed and sworn to before me this 20th day of January 1936.

[SEAL] (Sgd.) ANNA A. HAMMOND,
Notary Public.

My commission expires June 16, 1938.

[Endorsed:] Federal Communications Commission. Jan. 23, 1938. Received 2nd Mail. Mail and Files.

Excerpt from Minutes of the Federal Communications Commission (Broadcast Division)

Minute # 353

MAY 1, 1936—11:00 A. M.

Present: Commissioners, Sykes, Chairman, Case, and Prall.

* * * * * * *

24 *Applications designated for hearing*

The Broadcast Division designated the following applications for hearing:

File No. B4-P-960. Applicant, Telegraph Herald, Dubuque, Iowa. Call letters, New. Nature of Application, Construction permit. 1340 kc. 500 watts, daytime only. Site to be determined.

* * * * * * *

Federal Communications Commission, Washington, D. C, 17746

Notice

File No. B4-P-960

Docket No. 3967

In Re Application of Telegraph Herald (New). Dated 1-18-36. For Construction Permit. Class of Service, Broadcast. Class of Station, Broadcast. Location, Dubuque, Iowa. Operating Assignment. Specified: Frequency, 1340 kc.; Powder, 500 w.; Hours of operation, Daytime.

To ----------

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the legal, technical, financial, and other qualifications of the applicant to construct and operate the proposed station.

2. To determine the the need for additional daytime service in the area proposed to be served.

3. To determine whether the application may be granted within the purview of Section 307 of the Communications Act of 1934, as amended by the Act of June 5, 1936 (Senate Bill 2243).

4. Because of the pendency of another application with which conflict may be had by reason of interference, i. e., from Clinton Broadcasting Company (Emmons L. Abeles, Secretary) (B4–P–687); and from Stanley Reid & Charles Withnell Boegel, Jr., d/b as The Rapids Broadcasting Co. (B4–P–965).

5. To determine whether the applicant will be required to mark the towers in accordance with the engineering specifications as contemplated by Section 303 of the Communications Act of 1934.

6. To determine whether the site at which the applicant proposes to construct and operate the station will be satisfactory.

7. To determine whether the granting of the application will serve public interest, convenience and necessity.

The attention of the applicant is directed to the fact that while his application constitutes a part of the record, it is not a part of the testimony and he should be prepared, at the hearing, to introduce testimony to prove the allegations contained in his application.

The specific grounds mentioned are not be be considered, as exclusive of other grounds for the action and eventual decision of the Commission.

* * * * * * *

The hearing on the above-mentioned application will be held on September 14, 1936, at the hour of 10:00 A. M., at the offices of the Commission, Washington, D. C.

Notices of the hearing on this matter are, on the date below stated, being mailed to the following parties:

Telegraph-Herald, Eighth Avenue and Bluff Street, Dubuque, Iowa. New Applicant.

Clinton Broadcasting Co., Emmons L. Abeles, Secy., 1054 McKnight Bldg., Minneapolis, Minn. New Applicant for permit for station to operate on 1310 kc. frequency in Clinton, Iowa.

Stanley Reid & Charles Withnell Boegel, Jr., d/b as The Rapids Broadcasting Co., 1949 1st Ave., East, c/o P. O. Box 224, Cedar Rapids, Iowa. New Applicant for permit for station to operate on 1310 kc. frequency.

New Hampshire Broadcasting Co., Carpenter Hotel, Manchester, New Hampshire. WFEA Station assigned to 1340 kc. frequency.

26 Toledo Broadcasting Co., Commodore Perry Hotel, 505 Jefferson Ave., Toledo, Ohio. WSPD Station assigned to 1340 kc. frequency.

Pensacola Broadcasting Co., San Carlos Hotel, Pensacola, Florida. WCOA Station assigned to 1340 kc frequency.

Dodge City Broadcasting Co., Inc., First National Bank Bldg., 2nd & Spruce Sts., Dodge City, Kansas. KGNO Station assigned to 1340 kc. frequency.

Voice of South Dakota, 76 Third St., S. W., Huron, South Dakota. KGDY Station assigned to 1340 kc. frequency.

KGIR, Inc., 121 W. Broadway, Butte, Montana. KGIR Station assigned to 1340 kc. frequency.

Sanders Brothers Radio Station, RFD #1, East Dubuque, Ill. WKBB Intervenor.

If for any reason the applicant does not desire a hearing, he should notify the Secretary immediately so that notices sent to other parties may be cancelled.

Dated at Washington, D. C., June 23, 1936.

FEDERAL COMMUNICATIONS COMMISSION,
JOHN B. REYNOLDS, *Acting Secretary.*

Copy to:
Lovett (Telegraph-Herald).
Brady (Stanley Reid & C. W. Boegel, Jr.).
Hanley (Clinton Brdcstg. Co.).
Segal, WFEA.
Lohnes, WSPD & MBA/ch.
Dill, WCOA.
Bingham, WGIR.
Caldwell WKBB.

[Endorsed:] Signed for Above. Mailed By. Jul. 23, 1936. Mail and Files.

* * * * * * *

27 [Endorsed:] Federal Communications Commission. Aug. 18, 1936. Office of Secretary.

[Endorsed:] Federal Communications Commission. Aug. 19, 1936. Received 1st Mail. Mail and Files.

Federal Communications Commission, Washington, D. C.

File No. B4-P-960. Docket No. 3967

In Re Application of Telegraph Herald. Dated January 18, 1936. Location, Dubuque, Iowa. For Construction Permit. Operating Assignment Specified: Frequency, 1340 kc; Power, 500 watts; Hours of operation, Daytime.

Petition to intervene

Now comes Sanders Brothers Radio Station, licensee of Radio Station WKBB, East Dubuque, Illinois, by its attorneys, and pursuant to the provisions of Rule 105.20 of the Rules and Regu-

lations of the Commission petitions for leave to intervene in the above-entitled matter and to participate in the hearing to be held on the above-described application at the offices of the Commission in Washington, D. C., on September 14, 1936. Petitioner alleges that it has a substantial interest in the subject-matter of said hearing and in support thereof shows as follows:

(1) Petitioner is licensee of Radio Station WKBB operating at East Dubuque, Illinois, on 1500 kc., 100 watts, 250 watts LS, unlimited time and has an application now pending before the Commission and scheduled to be heard on September 14, 1936, by which it requests authority to move its transmitter and studio from East Dubuque, Illinois, to Dubuque, Iowa (File No. B4–P–1147, Docket No. 4031).

(2) The Telegraph Herald, applicant in the above-entitled proceedings, by its application, is seeking authority
28 to construct and operate a new broadcasting station at Dubuque, Iowa, to be operated on 1340 kc., 500 watts daytime.

(3) The City of Dubuque, Iowa, is contiguous to the City of East Dubuque, Illinois, and lies wholly within the primary service area of Station WKBB. In the event WKBB is authorized to move its transmitter and studio to Dubuque, Iowa, as requested by its pending application, it will continue to render a primary service to the City of Dubuque, Iowa.

(4) The City of Dubuque, Iowa, has a population of 41,679, according to the U. S. Census of 1930, and is the principal source of advertising revenue for Station WKBB. It will continue to be its principal source of revenue in the event its application to move is granted.

(5) There is insufficient advertising revenue available in the Dubuque area to support an additional radio outlet and the granting of the above-described application would therefore seriously impair the type of service now being rendered by Station WKBB.

(6) There is insufficient talent of an acceptable caliber for broadcasting purposes available in the Dubuque area to furnish meritorious programs for an additional radio station.

(7) The present service being rendered by Station WKBB is meritorious and adequate to meet the educational, religious, civic, and commercial needs of the Dubuque area.

(8) There exists no need for an additional radio outlet in the Dubuque area.

(9) The granting of the application of the Telegraph Herald would not serve the public interest, convenience, and necessity.

Wherefore, it is respectfully requested that petitioner, Sanders Brothers Radio Station, be allowed to intervene and to participate in the hearing to be held on the above-described application and that the Commission authorize such intervention immediately and in no event later than August 20, 1936. In support of the request for immediate action on this petition, your petitioner shows as follows:

29 (1) Applicant, the Telegraph Herald, has been heretofore authorized by the Commission to take depositions in support of its application at Dubuque, Iowa, beginning at 9 a. m. on August 21, 1936. Unless petitioner is allowed to intervene in these proceedings prior to the commencement of the taking of said depositions, it will not be a proper party to the deposition proceedings and will be deprived of cross-examination of applicant's witnesses testifying by deposition.

Respectfully submitted.

SANDERS BROTHERS RADIO STATION,
By LOUIS G. CALDWELL,
By REED P. ROLLO.

* * * * * * * *

Minute #398. September 22 1936—11:30 A. M.

Excerpt from minutes of the Federal Communications Commission

(Broadcast Division)

Present: Commissioners Sykes, Chairman, Case and Prall.

* * * * * * * *

RATIFICATIONS

The Broadcast Division ratified the following actions taken on the dates shown below:

Date of Action, 8-20-36.

Nature of Action. The Broadcast Division granted the petition of Sanders Brothers Radio Station (WKBB), to intervener in the hearing on application of Telegraph Herald, Dubuque, Iowa, for construction permit, File No. 84-P-960, Docket No. 3967.

* * * * * * * *

File No. B4–P–1147. Call letters WKBB

United States of America
Federal Communications Commission

Application for radio broadcast station construction permit or modification thereof

(Submit in duplicate to Federal Communications Commission, Washington, D. C. Swear to one copy)

To the Federal Communications Commission:

1. Name of applicant:[1] Sanders Brothers Radio Station.

2. Post-office address: State, Illinois. City, East Dubuque. Street and number, R. F. D. #1.

3. Is this application made for—

(a) Authorization to construct new radio station? No.

(b) Authorization to change present location of transmitter of existing station? Yes.

(1) What is distance in miles between present location and proposed location of transmitter? Approximately 3 miles. Exact site not yet determined.

(c) Authorization to change maximum rated carrier power, which necessitates installation of new equipment? No.

(1) Applicant represents that present maximum rated carrier power is 250 watts.

(2) Applicant represents that proposed maximum rated carrier power is 250 watts.

(d) Authorization to install new equipment? Yes.

(1) Indicate what new equipment is to be installed (check):

(a) New transmitter ----------

(b) Change in system of modulation ----------

31 (c) Change in type or number of vacuum tubes in last radio stage ----------

(d) Other changes (specify): New antenna and ground system.

4. What is applicant's principal business? Radio broadcasting.

5. Is applicant a citizen of the United States? Illinois Corporation. If so, state whether by birth or naturalization ----------

6. Is the applicant a representative of an alien or foreign government? No.

---

[1] If a corporation, state corporate name; if a partnership, state names of all partners and the name under which the partnership does business; if an unincorporated association, state the name of an executive officer, the office held by him, and the name of the association. The same name or names should be signed in the place provided at the end of application, except that in the case of a partnership, the application may be signed in the name of the partnership by one of the partners.

7. State whether applicant is a corporation, partnership, or association. Corporation.

8. If applicant is a corporation—

(a) Under laws of what State or country is it organized? Illinois. (A certified copy of the articles of incorporation shall be attached if not heretofore filed with the Commission.)

(b) Is more than one-fifth of capital stock owned of record or may it be voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? No.

(c) Is any director or officer an alien? No. If so, state name and position of each ----------

(d) Give names and addresses of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each. W. E. Klauer, Hotel Julien, Dubuque, Iowa—99%.

(e) Is stock to be sold after this permit is issued for purpose of raising money to construct and/or operate the proposed station? No.

9. If applicant is a corporation, is applicant directly or indirectly controlled by any other corporation? No.

(a) If so, give name and address of such controlling corporation ----------

(b) Under laws of what State or country is such corporation organized? -------- (A certified copy of the articles of incorporation shall be attached if not heretofore filed with the Commission.)

(c) Is more than one-four of capital stock of such corporation owned of record or may it be voted by aliens, their
32 representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? ————

(d) Is any director or officer of such corporation an alien? ---------- If so, state name and position of each ----------

(e) Is the above-described controlling corporation in turn a subsidiary? ---------- If so, attach additional sheets answering question 9 (a) to (d), inclusive, for each company to and including the organization having final control.

10. If application is made in behalf of an unincorporated association, state—

(a) Purpose of the association ---------- (A certified copy of the articles of association, or bylaws, shall be attached if not heretofore filed with the Commission.)

(b) The number of members ----------

Insert for F. C. C. Form No. 301

(These questions must be answered)

No. 4 (a). What other business or businesses is applicant directly or indirectly interested in; explain fully? None.

No. 4 (b). If applicant is a corporation, what other business or businesses are the officers, directors, or principal stockholders directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.) W. E. Klauer, President of the applicant corporation, is General Manager of the Klauer Manufacturing Company, Dubuque, Iowa, and Vice-President of the Klauer Julien Hotel Corporation, Dubuque, Iowa.

(c) Whether any members are aliens ----------

(d) If so, state name and position of each ----------

11. (a) Is applicant directly or indirectly, through stock ownership, contract, or otherwise, interested in the ownership or control of any other radio broadcasting stations? No. If so, state call letters and location of such stations ----------

(b) Has the applicant in the past been directly or indirectly interested in the ownership or control of any radio broadcasting stations? No. If so, state call letters and location of such stations ----------

33 12. (a) State applicant's relation to station (whether applicant is to be owner or lessee, and, if neither owner nor lessee, state nature of applicant's interest in use and control of station). Owner. (If not owner, a copy of agreement showing applicant's interest in station must be attached if not heretofore filed with the Commission.)

(b) If applicant is not to be owner of station, who is? ----------

(c) Will applicant have absolute control of station, both as to physical operation and programs broadcast? Yes. If not, attach copy of any contract which may in any way affect applicant's right to do so.

13. List assets and liabilities and state fully the facts showing applicant's financial responsibility with respect to the construction and operation of station.

Bldgs., bldg. equipment, fixtures	$5,362.50
Brdcstg. equipment, less depreciation, Jan. 1, 1936	11,250.00
Cash on hand and in banks	7,854.06
Accounts receivable	9,700.00
Accounts payable	400.00

14. (a) Has the applicant been finally adjudged guilty by any Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication directly or in-

directly through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or any other means, or of unfair methods of competition? No.

(b) Is applicant directly or indirectly controlled by any party finally adjudged guilty as above stated? No.

15. The frequency, power, and hours of operation requested for the proposed station are as follows:

(a) Frequency 1500 kilocycles.
(b) Power (night) 100 watts.
(c) Power (day) 250 watts.
(d) Hours of operation:
(1) Unlimited
(2) Daytime only ----------
(3) Limited ----------
(4) Sharing with (specify stations) ----------
(5) Other (specify) ----------

(e) State number of hours per day proposed station will operate. 16 hours.

34 (f) Does the application directly request the assignment of all or any part of the facilities (i. e., frequency, power, and/or hours of operation) now assigned to any other station or stations? No. If so, specify the station or stations and the facilities requested to be withdrawn therefrom ----------

16. Description of transmitting apparatus proposed to be installed—

(a) Make, Collins Radio Company. Type no. 300–C.

(b) Oscillator: Type of circuit ---------- Number, manufacturer's name, and type of tubes ---------- Normal plate current, per tube ---------- Plate voltage ----------

(c) List buffer and intermediate power amplifier stages, by number and type of tubes in each stage ----------

(d) Last radio stage: Number, manufacturer's name, and type of tubes ---------- Normal night operation for power requested: Plate current, per tube ---------- Plate voltage ---------- If greater day power than night power is requested, specify the following: Normal day operation: Plate current, per tube ---------- Plate voltage ---------- Describe fully the proposed method and procedure of reducing power at sunset ----------

(e) Modulator or last audio stage: Number, manufacturer's name, and type of tubes and how operated (Class "A," "A Prime," or "B") ---------- Normal plate current, per tube ---------- Plate voltage ----------

(f) Which radio stage is modulated? ----------

(g) What system of modulation is employed (high level, low level, grid bias in last radio stage, etc.)? ----------

(h) If low-level modulation is employed, give for modulated radio stage: Number and type of tubes _____ Plate current, per tube _____ Plate voltage _____

(i) The transmitter is designed for what maximum percentage of satisfactory modulation? _____

(j) What modulation measuring device will be used to determine that this percentage of modulation is obtained? _____

(k) Specify manufacturer's name, type, number, and full scale reading of the following meters:

(1) In last radio stage: Plate voltmeter _____ Plate ammeter _____

(2) Antenna ammeter _____

35 (l) Describe the plate power supply for last stage _____ Rating: Current _____ Voltage _____

(m) Maximum carrier power output of transmitter for satisfactory operation is _____ watts.

(n) Maximum rated carrier power of transmitter as determined by orders of the Federal Communications Commission is _____ watts.

17. (a) Type of antenna, 3/8 wave self-supporting Truscon vertical radiator.

(b) Height of vertical lead 250 feet.

(c) Length of flat top (if any) _____ feet.

(d) If not fully described above, give complete details _____

(e) Counterpoise (if used)—type and dimensions _____

(f) Antenna ground (if used)—how obtained? Radial (90 radials—total 18,000 ft.).

18. Applicant represents (1) that there is attached or (2) that there has been heretofore filed with the Commission, an accurate schematic diagram of the fundamental radio and audio circuits of the transmitter proposed, including antenna and ground or counterpoise connections, antenna feed system, and that it indicates the type of tubes. (This should be a blueprint or ink drawing, and, if possible, the size of this application, and attached hereto.)

19. (a) State what apparatus is included as an integral part of the transmitter that will automatically hold frequency within the required limits. "HA" cut quartz plate crystal with 50° C.

(b) Within how many cycles of the assigned frequency is this apparatus designed and guaranteed to hold the operating frequency? Plus or minus 50 c. p. s.

(c) State manufacturer's name and type number of this frequency-control apparatus. Collins Radio Company type 293.

(d) State whether or not frequency-control apparatus is automatically maintained at constant temperature. Yes.

(1) If so, state manufacturer's name and rated accuracy of the thermostat. American Instrument Company—plus or minus .1° C. Of the thermometer. American Instrument Company—plus or minus .1° C.

(2) Attach the circuit diagram of automatic temperature control system if not already on file with the Commission. On file.

36 (3) Attach a sketch or drawing of the automatic temperature control chamber, if not already on file with the Commission. On file.

(e) State name and type number of separate frequency monitor. Doolittle & Falknor Type Ser. No. 124.

(f) Give Federal Communications Commission approval number. 1455.

20. Cost of proposed station: Transmitter. $_____ Studio, $_____ Other items (state nature). Antenna and ground system $4,000.00. Land and Transmitter Bldgs., 6,000.00.

21. Proposed location of transmitter: State, Iowa. County, Dubuque. City or town, Julien Township—exact site to be determined. Street and number _____ Exact site to be determined. N. Latitude: Degrees _____, minutes _____, seconds _____ W. Longitude: Degrees _____, minutes _____, seconds _____

22. Number of persons residing within various distances of proposed location of transmitter is as follows: Exact site to be determined 0.4 mile _____, 1 mile _____, 2 miles _____, 3 miles _____, 5 miles _____, 8 miles _____

23. (a) Number of broadcasting stations (by call letters) located within various distances of proposed location of transmitter is as follows: 1 mile, None. 2 miles, None. 3 miles, None. 8 miles, None.

(b) Number of nonbroadcasting (commercial or Government) Receiving stations located within various distances of proposed location of transmitter is as follows: 1 mile, None. 2 miles, None. 3 miles, None.

24. (a) Name and give location of all Airports within 10 miles of proposed location of transmitter. Dubuque Municipal Airport (New—under construction).

(b) Give distance from proposed location of transmitter to each of such airports. Exact location of transmitter not yet determined.

(c) Name and give distance to any established Airways within 10 miles of proposed location of transmitter. None.

(d) Give maximum height (in feet) of towers above ground level. 250.

37 (e) Will towers be painted and marked with signal lights to conform with specifications of Department of Commerce (see Aeronautics Bulletin No. 9)? Yes.

(f) If application is for new station or change of transmitter location of existing station, attach map showing present location, proposed location, character of the surrounding area (retail or wholesale business, manufacturing, residential, or unpopulated; also, density of population, type of soil and terrain) and the location of airports, airways, and other radio stations, including receiving stations, except broadcast or amateur.

25. Proposed location of main studio: State, Iowa. County, Dubuque. City or town, Dubuque. Street and number, Hotel Julien, 2nd & Main St. Other studios maintained by station____

26. Average percentage of time expected to be devoted monthly to following services:

Commercial Programs:

(1) Entertainment, 30%.
(2) Educational, 5%.
(3) Religious _____
(4) Agricultural _____
(5) Fraternal _____
(6) News, 10%.
(7) _____

Sustaining Programs:

(1) Entertainment, 20%.
(2) Educational, 15%.
(3) Religious, 5%.
(4) Agricultural, 12%.
(5) Fraternal, 1%.
(6) Charities, 2%.
(7) _____

27. (a) Does applicant expect to obtain programs from what is known as a "chain"? Yes.

(b) Name of chain or chains. Affiliated Broadcasting Company.

(c) What will be the percentage of total time proposed to be used for chain programs (i. e., programs both paid and sustaining, which are duplicated by any other station)? 35% to 50%—No duplication in this service area.

(d) What will be the percentage of total time proposed to be used for merchanical reproduction (i. e., photograph records, electrical transcriptions, player piano, etc.)? 25%.

28. (a) State the objects to be attained by the construction, or changes in construction, for which application is made. 28 (a). Authority is requested in this application to move Station WKBB from its present site at East Dubuque, Illinois, to a more
38 efficient site just across the state line in Julien Township, Iowa, and to install an improved antenna and ground system, thus enabling the station to increase its present coverage and to improve its signal in the most populous section of its service area: namely, Dubuque, Iowa.

At the proposed new location the station will not only serve all of the area served by it at its present location, but will render a stronger signal in that area and extend its service to a large number of listeners in the territory surrounding Dubuque who are unable to receive the station at the present time.

(b) State definitely what service will be rendered by the proposed station which is not now available to the community which it expects to serve ----------

29. If the construction permit is granted, the construction will be commenced within 30 days of the granting thereof and will be completed and the station ready for operation within 180 days thereafter.

30. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a construction permit in accordance with this application.

Dated this 13th day of May, 1936.

SANDERS BROTHERS RADIO STATION
(Must correspond with item 1),
Applicant.

By W. E. KLAUER,
President-Agent.

(Be sure all necessary information is furnished)

CITY OF WASHINGTON,
District of Columbia, ss:

W. E. Klauer, being first duly sworn upon his oath, affirmed according to law, deposes and says that he is the (If applicant is not an individual, state relation of affiant to applicant) President of the above-named applicant, and that the facts stated in
39 the foregoing application and all exhibits attached thereto are true of his own knowledge, except as to such statements

as are therein stated on information and belief, and as to such statements he believes them to be true.

W. E. KLAUER, *Affiant.*

Subscribed and sworn to before me this 13th day of May 1936.

[SEAL] MIRIAM KOONTZ,
Notary Public, D. C.

(Notary Public's seal must be affixed where law of jurisdiction requires; otherwise state that law does not require seal.)

My commission expires January 3, 1941.

Before the Federal Communications Commission (Broadcast Division)

WASHINGTON, D. C., *September 14, 1936.*

Docket No. 3967

In the Matter of Petition of Telegraph Herald, Dubuque, Ia. Call Letters, New. Application for construction permit—frequency requested, 1340 kc.; power requested, 500 watts; daytime. Other Participants: WSPD, Toledo, Ohio; WKBB, East Dubuque, Ill. (Intervener).

Docket No. 4031

In the Matter of Petition of Sanders Bros. Radio Station, E. Dubuque, Ill. Call Letters: WKBB. Application for construction permit to move: frequency requested, 1500 kc.; power requested, 100 w., 250 w., LS; unlimited time. Other Participants: Telegraph Herald, Dubuque, Iowa (Intervener).

Statement of evidence

The above-entitled matter came on for hearing before Examiner James P. Bramhall, in Room 7121, Interstate Commerce Commission Building, at 10 o'clock a. m.

Appearances

On behalf of the Commission: Tyler Berry, Esq.

On behalf of Telegraph Herald: Eliot C. Lovett, Esq., 729 15th Street NW., Washington, D. C.

On behalf of Sanders Bros. Radio Station: Louis G. Caldwell, Esq., and Reed T. Rollo, Esq., 914 National Press Building, Washington, D. C.

On behalf of Station WSPD: Horace L. Lohnes, Esq., and E. D. Johnston, Esq., Munsey Building, Washington, D. C.

Colloquy

The EXAMINER: I will now call the calendar. Docket No. 3967, Telegraph Herald, Dubuque, Iowa, application for construction permit for operation on 1340 kilocycles, 500 watts power, daytime.

Mr. LOVETT. Present and represented by E. C. Lovett.

The EXAMINER. I will call the participants in that case. WSPD, Toledo, Ohio.

Mr. LOHNES. Represented.

The EXAMINER. WKBB, East Dubuque, Illinois, Intervener.

Mr. ROLLO. Represented by Reed T. Rollo.

The EXAMINER. Docket No. 4031, WKBB, Sanders Bros. Radio Station, East Dubuque, Illinois, application for construction permit to move, I assume, from East Dubuque, to Dubuque.

Mr. ROLLO. Represented by Reed T. Rollo.

41 The EXAMINER. Other participants, the Telegraph Herald, Dubuque, Iowa, intervener.

Mr. LOVETT. Represented by E. C. Lovett.

The EXAMINER. I assume there is no reason why these cases should not be consolidated and heard as one case.

Mr. ROLLO. I have no objection.

Mr. LOVETT. We have no objection.

The EXAMINER. Let the record show that the hearings in Docket 3967 and Docket 4031 are consolidated.

Are all of the parties ready?

Mr. LOVETT. We are ready to proceed.

The EXAMINER. All of the witness will rise and be sworn.

(The witnesses were sworn by the Examiner.)

Mr. ROLLO. If the Examiner please, before the commencement of the taking of testimony I would like to make a brief opening statement on our case.

The EXAMINER. All attorneys participating in both or either one of the cases involved in this proceeding, will be required to file separate appearances for each party represented.

What is the nature of your statement, Mr. Rollo?

Mr. ROLLO. I would like to make a statement of our understanding of the issues raised in the two applications about to be heard. It will be very brief.

The EXAMINER. Does the other side want to make a statement?

Mr. LOVETT. I will wait to hear what they have to say.

The EXAMINER. You may proceed, Mr. Rollo.

Mr. ROLLO. As the Examiner knows, the proceeding involves two applications, one from my client WKBB, an existing station in East Dubuque, Illinois, just across the river from Dubuque, Iowa, and it proposes by its application to move its transmitter and its main studio from East Dubuque over to a site to be determined in Dubuque.

It is our position that such an application under ordinary circumstances would have been granted without a hearing, inasmuch as the application now falls within the effective field of the Davis Amendment. At the time it was filed and at the time it was receiving the recommendations from the Commission's Divisions, the Davis Amendment and the quota rules of the Commission were on the books.

42 The application proposes to increase the efficiency of the existing station, and we propose by competent testimony to show that.

We also propose by competent testimony to show that we will not diminish our present service area in any way.

The application of the Telegraph Herald, the other application in the proceeding, is an application for a daytime station, a new station, to be operated on a regional frequency.

We do not question the fact that the Telegraph Herald would operate a meritorious station probably, if granted its application; but it is our position, and we expect to offer testimony to you today to show that WKBB is rendering a meritorious service, and that the community which it serves is not competent to support two radio stations from a commercial viewpoint; that two stations operating competitively in that area would have the effect of deteriorating the existing service of WKBB, and there would not be left sufficient commercial support for the other station to operate a meritorious service.

The EXAMINER. In other words, you take the position it would be unsound to establish another station in that vicinity?

Mr. ROLLO. That is correct.

The EXAMINER. What have you to say, Mr. Lovett?

Mr. LOVETT. We will prove to the contrary.

The EXAMINER. All right, you may proceed with your case, Mr. Lovett.

Mr. LOVETT. I will call the first witness, Mr. Arndt.

Whereupon WILLIAM J. ARNDT, a witness called on behalf of the Applicant in Docket No. 3967, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. LOVETT:

Q. Will you give your name, residence, and occupation?—A. William J. Arndt, residence, Dubuque, Iowa. I am circulation manager of the Telegraph Herald and a director of the corporation which is the applicant in this proceeding.

Q. How long have you lived in Dubuque?—A. Approximately 21 years.

43 Q. How long have you been connected with the Telegraph Herald?—A. About 14 years.

Q. In what business is the Telegraph Herald engaged?—A. The Telegraph Herald is an Iowa corporation principally engaged in the publication of a daily newspaper known as the Telegraph Herald, and a job-printing establishment which of course is regarded as an entirely separate entity.

Our charter has been amended to authorize us to own and operate a radio station.

Mr. ROLLO. I object to that and move that it be stricken, in the absence of proof of the charter itself.

By Mr. LOVETT:

Q. Have you a copy of the amendment to your charter?—A. We have.

The EXAMINER. The objection will be overruled. You will follow it up by introducing a copy of the charter. I think the file already has a copy of the charter in it.

Mr. LOVETT. At this point I also wish to state that there has been filed with the Commission a certified copy of the complete charter including the amendment to the charter, and I would like to have that incorporated in the evidence by reference.

However, the witness, as he stated, has a copy of the amendment, so that it may be placed in the record at this time for convenient reference.

I therefore offer in evidence a certified copy of the amendment to the charter, as Applicant's Exhibit No. 1.

The EXAMINER. That will be admitted in evidence.

(The document referred to was received in evidence, marked "Applicant's Exhibit No. 1, Docket No. 3967," and is filed with the transcript in the possession of the Commission.)

By Mr. LOVETT:

Q. This Exhibit No. 1 is a true copy of the amendment as filed with the Secretary of State?—A. It is.

Q. When was the Telegraph Herald established?—A. The Telegraph Herald was established in 1836, and for the past
44 century has devoted its interests to the dissemination of news, advertising, and various features of printed entertainment.

We maintain a large reportorial staff in the City of Dubuque, and upwards of 150 country correspondents, as a news-gathering organization.

Q. Who are the officers and directors of the Telegraph Herald?—A. The officers are Fred W. Woodward, president; Joseph C. Quigley, vice president; C. L. Woodward, secretary; and F. R. Woodward, treasurer.

The directors, in addition to those officers already named, include Mark R. Kane, Elsie Woodward, and myself, William J. Arndt.

Q. Will you give the names and address of the stockholders who own 10 per cent or more of the capital stock, and give the amount owned by each?—A. Fred W. Woodward and Joseph C. Quigley are the majority stockholders. Mr. Woodward owns approximately 51 per cent of the stock and Mr. Quigley owns approximately 24 per cent of the stock.

Q. They are both residents of Dubuque?—A. Correct.

Q. Are any of the officers, directors, or stockholders of the corporation aliens?—A. No; all of the officers and stockholders are natural-born American citizens.

Q. What area does the Telegraph Herald serve?—A. Our service area extends approximately 50 miles in all directions from Dubuque. However, we extend a greater distance to the northwest in the State of Iowa. Generally the counties immediately bordering Dubuque I have in mind as serving are Jackson County, Delaware County, Clayton County in Iowa, Grant County in Wisconsin and Jo Daviess County in Illinois, which mostly includes the Dubuque trade area.

Q. What is the general character of this area?—A. The general character is principally farming products, of which are corn, hogs, dairying, butter and eggs, cheese, and creameries scattered throughout the territory, small grains and so forth.

Q. What is the approximate total circulation of the Telegraph Herald?—A. In excess of 31,000.

Q. How is that distributed with relation to Dubuque, Dubuque County, and the balance of the area?—A. The circulation in the City of Dubuque is a trifle in excess of 10,000. In the County of Dubuque it is approximately 14,000. I believe that is what you asked, was it not?

Q. So that in excess of 50 per cent of your circulation is outside of the County of Dubuque?—A. That is correct, because it is 14,000, in relation to the 31,000.

Q. What is the population of Dubuque and of Dubuque County?—A. Dubuque, according to the 1930 Bureau of the Census figures, has 41,678; Dubuque County has 61,214, of which ap-

proximately almost 32 per cent in Dubuque County is rural population.

Q. What is the character of the population in the City of Dubuque?—A. Approximately 93 per cent is native white, 6 per cent foreign-born, .2 negro.

Q. Will you tell us what is the population of these other five counties you have mentioned and the percentage of that population which is rural?—A. Clayton County has a total population in excess of 24,000, and approximately 100 per cent of this population, according to the 1930 Bureau of the Census, is rural population. I think I have the exact figure here of that population.

Q. Will you give that figure for Clayton County again and give it accurately?—A. According to the 1930 census Clayton County has a population of 24,559. The percentage of the rural population according to the 1930 census is 100 per cent in that particular county.

There are only four towns, incidentally, in that county, that have a population of 1,000 or more. Elkader, the county seat has a population of 1,382; Strawberry Point has a population of 1,228; McGregor has a population of 1,299; and Guttenberg has a population of 1,918.

Delaware County has a population of 18,122, of which 81-plus per cent is rural population.

Only one town in this county has in excess of 1,000 population, which happens to be the county seat, Manchester, with a population of 3,413.

Jackson County has a population of 18,481, of which 80-plus per cent is rural population.

Two towns in this county have a population of 1,000 or over. Here again the county seat, Maquoketa has a population of 3,595 and Bellvue has a population of 1,717.

46 Grant, County, Wisconsin, has a population of 38,469, of which 89-plus per cent is rural population.

Four towns in this county have a population in excess of 1,000. Lancaster has a population of 2,432; Cuba City has a population of 1,157; Fennimore has a population of 1,341; and Platteville has a population of 4,047.

Jo Daviess County, Illinois has a population of 20,235, of which 80-plus per cent is rural population.

Three towns in this county have 1,000 or more population; the county seat, Galena, has a population of 3,878; Warren has a population of 1,179; and East Dubuque, Illinois, has a population of 1,395.

That concludes the six counties I mentioned.

Q. Mr. Arndt, are you personally familiar with these various counties and the density of the population in them?—A. I am, by reason of my position with the Telegraph Herald having taken me into those particular areas frequently.

Q. What have you to say with reference to the density of the population in the area say 35 miles from Dubuque in all directions and extending for about 15 miles?—A. It cannot be considered as densely populated for the reason that in this particular area the farms average about 160 acres to a half section, and in some cases a section of 640 acres, so that it is sparsely settled, large farms, in other words.

Q. You have indicated that there are practically no towns of any particular importance.—A. Yes; the records from the 1930 census speak for themselves in that respect.

Q. What, if any, other newspapers and advertising media serve this area composing the six counties or parts of them?—A. There is a total of 29 weekly newspapers and 13 daily newspapers that circulate in this particular area.

Of those 13 daily newspapers in Dubuque is the Catholic Daily Tribune and the Des Moines Register-Tribune of Des Moines and the Cedar Rapids Gazette of Cedar Rapids, which are competitive both from a circulation and advertising standpoint, especially from an advertising standpoint in a national way.

In addition to these media we have the Dubuque Leader, a weekly paper, the Buyers Guide and the Direct-by-Mail, and the Witness. Those are published in Dubuque.

47 Q. Are there any other advertising media or have you listed them all?—A. I might amplify my statement by saying that the 29 weekly newspapers are sold to Dubuque advertisers as a group or any portion thereof, the decision resting entirely within the discretion of the proposed buyer.

Q. Does the Telegraph Herald publish the radio programs of WKBB of East Dubuque?—A. No, sir.

Q. Why not?—A. We have never been approached on that matter.

Q. What caused the Telegraph Herald to make application for a permit to construct this station in Dubuque?

Mr. LOHNES. I do not know what that has to do with it.

The EXAMINER. Is that an objection?

Mr. LOHNES. Yes, sir.

The EXAMINER. The objection will be sustained.

By Mr. LOVETT:

Q. What was the purpose of the Telegraph Herald in making this application?

Mr. LOHNES. I make the same objection.

The EXAMINER. That is calling for a conclusion and the objection will have to be sustained.

Mr. LOVETT. Mr. Examiner, that calls for a statement of fact on which they based their decision.

The EXAMINER. You open a very wide field when you ask why a man applied for a radio station. The objection will be sustained.

Mr. LOHNES. The fact remains they have applied for one.

The EXAMINER. The objection will be sustained. It is assumed he wanted a radio station, and applied for it.

Mr. LOVETT. And I am asking for a general statement of what he intends to accomplish with that station.

The EXAMINER. The answer necessarily would be a conclusion. Let the statement of facts of the witness determine whether or not he wanted the station, and how bad he wanted it and whether he is entitled to it or not.

Mr. LOVETT. And what he intends to do with it after he gets it. I am asking him that question.

The EXAMINER. Go ahead to something else.

48 By Mr. LOVETT:

Q. I will ask what use they plan to put this station to if they be permitted to establish it.—A. To more adequately serve that area, especially from a localized standpoint.

Q. What have you to say regarding the educational institutions and educational system in the City of Dubuque and this area?—A. Dubuque, I should say, is regarded as one of the outstanding educational cities in the Middlewest, by reason of the fact, first of all, that we have 10 public schools—10 parochial and private schools, five academies, two colleges, one university and one commercial college.

The enrollment of these various institutions is in excess of ten thousand pupils.

The EXAMINER. You mean collectively?

The WITNESS. Collectively, that is correct. The total enrollment of the various institutions is what I had reference to.

Then, the moment you get outside of Dubuque we are interested in the agricultural aspect of that territory. The large percentage of the population you find in this area is rural population.

By Mr. LOVETT:

Q. You are interested in that population to a radius of how many miles?—A. As I stated before, we are interested in a radius of 40 to 50 miles.

Q. What type of equipment do you propose to install?—A. The tentative plans are to install a Collins radio, Type 20-A transmitter with vertical radiator at least 185 feet in height. The

antenna system will of course be designed by our engineer, Mr. John Barron, who will of course later testify as to the technical application, but incidentally he has our authority to make any changes that might be necessary to adequately serve this area of 40 to 50 miles.

Q. Where do you propose to locate the transmitter, if any decision has been made?—A. There again it will be up to our engineer to decide the location.

However, we have made tentative arrangements whereby we could locate the transmitter approximately three miles due north by a little east of the business center of the City of Du-
49 buque. Tentative plans have been made for an agreement covering this particular lease, subject of course to approval by the Commission and site tests.

Q. What type of transmitter house do you propose to construct?—A. Our plans are to house the transmitter in a fireproof brick building.

Q. Where do you propose to locate the studios?—A. In the Telegraph Herald Building, on the second floor.

Q. Is adequate space available there?—A. Yes, available space is there, and quite sufficient space.

Q. What type of studio do you propose to construct?—A. We propose to construct two studios. They, of course, will be soundproofed and acoustically treated, and modern in every respect. One of these studios will be sufficiently large to accommodate orchestras and groups comprising a great many people.

Q. What do you estimate will be the approximate cost of construction?—A. Approximately $25,000.

The EXAMINER. Does that include the installation and all?

The WITNESS. Yes, that includes the construction.

By Mr. LOVEIT:

Q. Who will comprise your personnel? A. The personnel will be comprised of the studio manager, a chief engineer, assistant engineer, a program director, chief announcer, two assistant announcers, three operators, one stenographer, and an adequate sales force.

Q. What do you estimate will be the monthly operating cost? A. In the neighborhood of $2,000.

Q. Will you state whether or not the Telegraph Herald is prepared to meet this expense of construction and operation?

Mr. ROLLO. I object to that question. There has been no foundation laid to show that this witness is qualified to answer.

The EXAMINER. It is objectionable as calling for a conclusion, but if your are going to follow that up with a financial statement I will let it in, in that form.

Mr. ROLLO. I would like to object to the question for the reason I do not believe the witness is qualified to detail a financial statement.

50 The EXAMINER. Have you someone here to do that?

Mr. LOVETT. He is perfectly qualified to do that.

The EXAMINER. Go ahead and qualify him on that score.

By Mr. LOVETT:

Q. What is your position in the corporation?—A. A director of the corporation.

Q. Have you access to the corporate books?—A. I have.

Q. Have you examined them recently?—A. I have.

Q. Can you state of your own knowledge the financial condition of the applicant?—A. Positively.

Q. Will you state what its assets, liabilities, and net worth are now?—A. The assets of the Telegraph Herald are in excess of one million dollars. The liabilities are $160,000, leaving a net work of approximately $942,000.

Q. Isn't it $842,000?—A. It is $160,000 from the $1,000,000 which leaves $840,000—Yes, I stand corrected on that.

Q. Will you state whether or not the corporation has taken steps to authorize the expenditure of such funds as may be necessary for the purpose of this construction and operation?—A. Yes, they have. A meeting of the directors was held just recently authorizing all expenditures necessary and advisable, and they passed a resolution to that effect.

Q. Have you a copy of that resolution here?—A. Yes, I have.

Q. You may read it into the record if it is not too long.

Mr. LOHNES. I think a copy of the resolution properly certified by the secretary of the corporation should be introduced in evidence, and I object to the reading of the resolution.

The EXAMINER. Yes, unless he was present at the time and participated in the action taken.

The WITNESS. This state, "Special Meeting of the Directors——"

The EXAMINER. (Interrupting.) It will not be necessary to read it. You are going to offer that in evidence, are you not?

Mr. LOVETT. I was not planning to, because I felt his word was sufficient that it had been passed.

51 The EXAMINER. It will not be necessary to read it, that can be introduced in evidence.

Mr. LOVETT. Then, if the Examiner please, I now introduce this resolution in evidence and offer it as Exhibit No. 2, and we would ask leave to furnish an extra copy before the hearing is completed.

The EXAMINER. That will be admitted in evidence as Applicant's Exhibit No. 2, subject of course, to the filing of the exhibit in duplicate.

(The document referred to was received in evidence, marked "Applicant's Exhibit No. 2, Docket No. 3967," and is filed with the transcript in the possession of the Commission.)

By Mr. LOVETT:

Q. Mr. Arndt, state whether or not it is the intention of the Telegraph-Herald to operate this station on a commercial basis?—A. Yes, it is our intention to do that.

Q. Have you investigated the advertising possibilities in the area which you propose to serve?—A. Yes, I have.

Q. Will you state what your investigation has disclosed?—A. Dubuque, Iowa, has approximately 350 advertising accounts of which——

The EXAMINER. (Interrupting.) You mean those are accounts that advertise regularly in the newspaper?

A. In the different media.

The EXAMINER. As a whole?

The WITNESS. As a whole, yes.

The EXAMINER. All right, go ahead.

The WITNESS. Of these accounts, 231 are active accounts.

Mr. ROLLO. Mr. Examiner, may I inquire as to the source of this information? There has been no foundation laid for it.

The EXAMINER. Yes, that would be pertinent.

The WITNESS. We maintain a record in our office of all advertising accounts, and I have access to the records at all times. We tab those that are active accounts, and included in those are the additional accounts that we do not regard as active, but are potential insofar as they are interested in a certain advertising medium.

Mr. ROLLO. Do you propose to furnish a list of the advertisers you mentioned, the 350?

52 The WITNESS. I propose to offer the names.

Mr. LOVETT. He proposes to offer evidence to support his statement regarding the availability of advertising.

The EXAMINER. Will you supply the names of those you refer to?

Mr. LOVETT. Yes, he is just making a general statement regarding the advertising possibilities in Dubuque and will furnish the list later.

The EXAMINER. All right, you may proceed.

By Mr. LOVETT:

Q. Will you also state what your investigation has disclosed regarding Dubuque being a business and industrial center.—A. Dubuque is very advantageously located by reason of the fact that four Western railroads operate through Dubuque, and the

inland waterways corporation barge line and twenty-four freight lines operate daily in and out of Dubuque.

The EXAMINER. Freight trains?

The WITNESS. No, twenty-four motor freight lines, in addition to the four railroad lines.

The completion of the locks and dams along the Mississippi will greatly increase the traffic over the inland waterways barge line.

Dubuque ranks highly as a railroad distributing point and a cigar distributing center. We have four grocery jobbers, and we have fruit jobbers, beverage distributors, flour jobbers, one large drug jobber, paper products jobbers; and Dubuque is headquarters for three lumber dealers who maintain branches in towns in this area.

Industrially, I might state that we have the Farley-Lecter Sash & Door Mills, the largest I believe in the world, I know it is the largest in the United States.

In addition to that we have another large sash and door industry, the Carr-Rider-Adams Company.

We have pumping and plumbing supplies such as A. Y. McDonald Manufacturing Company, the Cricher-Treadway Company, and a large foundry, the Adams Foundry.

The Dubuque trade area produces approximately a thirty-five million dollar retail market, and a sixty-four million dollar wholesale market, of which twelve million is retail within the city of Dubuque and twenty million wholesale.

53 These figures were obtained from the 1933 market survey of the 1933 Bureau of Census. Indications point to even healthier conditions in this area by reason of the fact that agriculture will benefit by a better market due to increased prices to the farmer.

As I stated before, Dubuque has 231 active advertisers, and of this amount I personally contacted sixty, and they have manifested a desire and willingness to advertise over our station if and when we begin operations.

By Mr. LOVETT:

Q. Are any of these you have contacted now using radio as an advertising medium?—A. Out of the some sixty-odd I contacted, thirty-two have never advertised over the radio.

Q. Are the others advertising now?—A. No; they are not.

Q. You have mentioned these various establishments in Dubuque that are interested in radio advertising, and, according to your investigation, are there any outside of Dubuque that are potential advertisers, or any national advertisers?—A. Yes; there are advertisers outside of the city of Dubuque. I have in mind

first of all, the national advertising companies that naturally accrue to that market, the various hatcheries, dance pavilions, butter distributors, and so forth, outside of the city of Dubuque.

Q. Have you prepared a list of the various retail and wholesale outlets in the city of Dubuque?—A. Yes; I have.

The EXAMINER. Has he a list of those people he contacted for advertising?

By Mr. LOVETT:

Q. Did you prepare this list of retail and wholesale outlets in Dubuque?—A. Yes.

Q. You know it is correct?—A. Yes.

Mr. LOVETT. I offer this list in evidence as Applicant's Exhibit No. 3.

The EXAMINER. This shows various commercial establishments?

The WITNESS. That is right; classified.

Mr. ROLLO. Are they the sixty accounts you contacted?

The WITNESS. No; these are the retail and wholesale outlets.

54 Mr. Rollo. I have no objection to the exhibit if it is just offered to show the existence of the retail and wholesale outlets.

The EXAMINER. This last exhibit applies to Dubuque alone?

(The list referred to was received in evidence and marked, "Applicant's Exhibit No. 3, Docket 3967," and is filed with the transcript in possession of the Commission.)

The WITNESS. I might state in addition to the retail and wholesale outlets in the city of Dubuque, there are also considerable additional outlets in this particular area.

The EXAMINER. This last exhibit applies to Dubuque alone?

The WITNESS. Yes; the last exhibit applies to Dubuque.

By Mr. LOVETT:

Q. Would the figures indicated on this last exhibit comprise a majority of the retail and wholesale outlets in this radius of fifty miles of Dubuque?—A. Oh, no; not in the area. There is considerably more in some of the classifications outside of Dubuque than there would be right in the city of Dubuque.

Q. Who will determine the policies of the proposed station? A. The board of directors of the Telegraph-Herald. I am a member of the board, of course, and will be held responsible for the execution of the policies as outlined by the board.

Q. What radio programs are now received in Dubuque and the immediate vicinity, if you can state of your own personal knowledge?

The EXAMINER. What stations do you hear there in Dubuque?

By Mr. LOVETT:

Q. Yes; and the types of programs they broadcast.—A. The outstanding station received in Dubuque is Station WMT at Waterloo, a member of the NBC chain, and other clear-channel stations are received in the city of Dubuque—it is not necessary to name those, is it?

The EXAMINER. Name some of them you refer to.

The WITNESS. I have in mind, WGN, WMAU, both at Chicago, WHO at Des Moines, WLS at Chicago, WLW at
55 I think it is Cincinnati; and WIBA at Madison comes in very rregular, and of course, we have WKBB at East Dubuque, Illinois.

By Mr. LOVETT:

Q. Can you state of your own knowledge the type of programs received over these stations?—A. The type of program received over the clear channel stations, I think everybody is familiar with. They naturally deal in generalities.

Q. Are there any farm programs?—A. Yes; there is a farm program, a Farm and Home program of those stations, but they are not necessarily rendering a localized service that might be of particular interest to this area.

Station WKBB at East Dubuque does not localize their programs to any extent, and I might substantiate my statement by saying that on September 2nd, and I regarded that as a typical day's broadcast, I sat at my radio from seven o'clock in the morning until eleven o'clock at night, and I find that 52 percent of the programs originated from the ABC Network, that is the Affiliated Broadcasting Company; that 30 percent was transcriptions, and 18 percent local, of which the local announcer used about 115 minutes out of 170; there was one local artist of fifteen minutes, and an out-of-town sponsored orchestra for forty minutes.

Q. Did you consider that a typical week-day program of this station?—A. Yes; I would. I have compared the program with the list of WKBB's program.

Q. All right, continue.—A. On Sunday, September 6th, the result of my findings is given here. I was at my radio on that day from nine o'clock in the morning until eleven o'clock at night, and 68 percent are ABC Network programs; 23 percent transcriptions; and 9 percent local, of which 30 minutes was devoted to the United Church service, which was purely a local event, and 45 minutes devoted to an out-of-town sponsored orchestra, which was playing at that time at Melody Mill, and the name of the band was Ted Wayne, if that is important.

Q. You found no local talent on those programs other than you have stated?—A. Other than I have pointed out, the
56 local artist for fifteen minutes on this particular Thursday a typical day's program, and the thirty minutes United Church service on Sunday, I believe was the total.

Q. What types of programs do you intend to broadcast over the proposed station?—A. It is our aim to cater especially to agricultural and educational interests, and broadcast religious programs of all denominations, to give a timely news service, to cooperate with and give free time to all civic, philanthropic, charitable, and fraternal organizations, the local, county, and state agencies, and to provide a forum for the discussion of questions of public concern.

I have prepared a tentative program to illustrate and week's broadcast, and this is in accordance with the needs of the listeners and the availability of program material.

Of a week's broadcast, we will devote twelve and one-quarter hours to education; ten and one-sixth hours to agriculture; thirty-five and one-half hours to entertainment; five and one-twelfth hours to religion; ten and three-quarter hours to news; one and three-quarter hours to fraternal and civic broadcasts. I might amplify that hour and three-quarters of civic and fraternal broadcast by stating that this is a definite time assigned for that type of broadcast, and there will be occasions where this will be considerably higher by reason of some special civic program that we would want to broadcast.

It is our present intention to install remotes in the Dubuque Weather Bureau office, which will be used in conjunction with the County Agricultural Agent in Dubuque County and the other agricultural agents who will come to Dubuque and broadcast agricultural programs.

Q. Have you made tentative arrangements to that end?—A. Positively, yes. We will have a remote for the University of Dubuque, and Columbia College at Dubuque.

Q. You said your had prepared a proposed schedule of programs?—A. Yes; I have prepared a tentative week's program.

Q. From the copy of that program which you have prepared, will you point out some of the programs which are not now available to the Dubuque listening public?—A. Do you wish me to take the entire week's program?

Q. Take a particular day, then possibly some outstanding programs in other days of the week, limiting yourself,
57 however, to types of programs which are a departure from those now available to your proposed listeners?—A. First of all, by referring to a typical day's broadcast of Thursday,

which compared with WKBB's programs of this particular Thursday I indicated, there are:

Safety Flashes.

Local weather reports direct from the weather bureau.

Local market reviews.

Telegraph-Herald Woman's Institute.

Columbia College of the Air.

General market reports.

United Press News Flashes.

Tri-State Weather Forecast direct from the weather bureau.

Grant County Farm Program, which happened to fall on that particular day.

Book Review.

Behind the Scenes.

News Commentary.

Grant County School Program, which again happened to fall on that particular day.

Closing market quotations.

Clark College of the Air.

If you wish, I can take the complete week's program and point out some others.

Q. Just point out some particular program for each day, and that will be sufficient.

Mr. LOHNES. Mr. Examiner, I have not objected up to this point, but I do not think we should go into great detail in a tentative program when there has been no testimony so far that he has contacted any of these people, but it is merely what, in the mind of the witness, he would put on if he should obtain the program material.

By Mr. LOVETT:

Q. And on what is your listing based?—A. My listing is based on actual contacts for the local talent in Dubuque available, as it applies to this program. I have interviewed them, they have shown a keen interest in broadcasting these various programs I have outlined, and have given me assurance of every cooperation in putting on worth while local broadcasts.

Q. Very well, continue. A. On Monday, of course, there would be an occasional Rotary Club broadcast.

I am not going to name those I originally stated in the Thursday program, but just the additional ones.

Protective program from the sheriff's office.

On Tuesday, and this is true for the entire week, we have morning devotion, with the cooperation of the Dubuque Ministerial Association.

Mother Goose Time originating from the Mothers' Clubs of the Congregational and Presbyterian churches.

The Dubuque Police Department.
The Delaware County Farm Program.
Travel Talks by Mr. Rhodes of the A. A. A.
The Delaware County School Program.
Parochial School Program.

On Wednesday we would have—do you wish me to repeat the morning devotion?

Q. No, just two or three each day is all that is necessary.—A. On Wednesday we would have:

Household Art;
Clark College of the Air;
Jackson County Farm Program;

Q. You have mentioned farm programs and educational programs in connection with these counties, just what is your arrangement in that connection?—A. The agricultural and farm programs will vary from day to day by reason of the fact that one county of the six will broadcast, for example on Monday, and the next county agent and the county superintendent will put on a program for the next day, and so on.

In other words, there is a program designed once a week for the special interests of one of the six counties for educational and agricultural matters, and the next day would be some other county agent and superintendent of schools.

Do I make myself clear on that?

Q. You have made definite arrangements to that end?—A. Positively, yes.

Q. You may continue.—A. Jackson County School Program;
The University of Dubuque Musical Program;
Dubuque High School, and this would be orchestra, bands, glee club and dramatics, which incidentally comes on from four thirty to five o'clock in the afternoon.

59 There will be a sports review and comment put on regularly.

Columbia College of the Air;
Grant County Farm Program;
Grant County School Program;
German Band, local talent;
Columbia College of the Air;
Week-end travel suggestions by Mr. Rhodes of the A. A. A. again;
Immaculate Conception Academy Educational Program;
How Does Your Garden Grow;
Friday the Jo Daviess County Farm Program;
Jo Daviess County School Program;
The University of Dubuque Educational Series, remote control;
Elementary Junior and High Schools;

Schrader Conservatory of Music Program.

Q. I understand these are all programs of your own knowledge definitely arranged for which are not now being received in this proposed area?—A. That is correct. That is from purely a local standpoint.

Q. That is, you mean there are some "Woman's Hour" program, or something like that, that may be received over a chain, but it is not localized?—A. That is right, it does not originate in Dubuque.

Continuing, Clayton County Farm Program:

Fraternal Activities, and this happens to be on Saturday afternoons;

Your Government;

Clayton County School Program;

On Sundays,

Uncle Bob Reads the Telegraph-Herald, and that would originate in Dubuque:

Church Calendar of the churches of Dubuque.

Q. Is there anything Sunday afternoon?—A. Telegraph-Herald local and territorial news:

Dramatics, University of Dubuque:

Current Events.

Of course, those I have indicated are in addition to the original programs I have mentioned.

Mr. LOVETT. Mr. Examiner, may I have this list marked for identification and offer it in evidence as Exhibit No. 4, by
60 filing an additional copy thereof this afternoon, as we do not seem to have our duplicate copy here.

The EXAMINER. Yes, but if you do not file them today, they will not be considered.

Mr. LOVETT. Then, I now offer the list that has been identified by the witness as Applicant's Exhibit No. 4.

(The list referred to was received in evidence and marked "Applicant's Exhibit No. 4, Docket 3967," and is filed with the transcript in possession of the Commission.)

By Mr. LOVETT:

Q. Mr. Arndt, are there any other programs available in addition to those you have listed here?—A. Yes; there is additional program material available, and I have prepared a list of that.

Q. Is this a list which you have prepared yourself of the additional program material available?—A. Yes, it is.

Q. You know it is a correct list?—A. It is correct.

Mr. LOVETT. I offer in evidence this list prepared by the witness as Applicant's Exhibit No. 5.

Mr. ROLLO. I have no objections.

The EXAMINER. Applicant's Exhibit No. 5 will be admitted in evidence.

(The list referred to was received in evidence and marked, "Applicant's Exhibit No. 5, Docket 3967," and is filed with the transcript in possession of the Commission.)

By Mr. LOVETT:

Q. Will you name some of those appearing on this list, Exhibit No. 5, which you consider especially important?—A. I will try to name them in the order of their importance.

Orchestras, Aces of Melody, Shullsburg, Wisconsin;

Bill Rawson, Platteville, Wisconsin;

Columbia College Military Band;

Columbia College Concert Band;

Wartburg Theological Seminary, what they call the matin service every morning, consisting of hymns, responsive chanting, scripture lesson and prayer; which would also include bi-monthly German vesper services, by reason of the fact that a certain percentage of the population in that area is still very much German;

Mrs. Janet Fritz, an accomplished violinist who has studied abroad;

61 Miss Edity Groff, a pianist, a graduate of one of the leading musical schools;

The Academy of the Visitation, of Dubuque;

O. A. Reynolds, Secretary of the Chamber of Commerce, on the activities of the Chamber;

The Dubuque Traffic Association under S. G. Creswick;

Almeda Stonebraker, music teacher and accomplished pianist, a graduate of one of the institutions in Dubuque;

John Kirchen, a very accomplished violinist. His residence is Cascade, but the majority of the time he is in Dubuque following the pursuit of his art.

There are numerous others here such as accordianist, violinist, and others which I will not go into.

Q. Have you contacted these individuals and know they are available for broadcasting purposes?—A. I have contacted the majority of them.

Q. Is the complete list of program material available in the Dubuque area?

Mr. ROLLO. I object to the question. As the result of his last answer, he is not qualified to answer the question.

The EXAMINER. He can only testify as to those he actually contacted, and you better ask him who they are otherwise I will sustain the objection to the question.

By Mr. LOVETT:

Q. You have contacted the ones you have mentioned?—A. That is right.

Q. Have you contacted others?—A. Yes.

Q. Possibly counsel prefers you to name the ones you have contacted in addition?—A. There is Mrs. Ada Hermonn, an accomplished pianist, who takes an active part in the various recitals in Dubuque: Ed Baker, a Xyllophonist.

Mr. ROLLO. Is the witness enumerating those he has contacted?

The EXAMINER. Yes, as I understand you are testifying only as to those you have contacted?

The WITNESS. That is correct. Carl Graber, recreational director. Having lived in Dubuque for twenty-one years, and by reason of acquaintance with the various musical institutions, I know there naturally would be consideably more program material available, and I expect to go into that in further detail later on.

62 By Mr. LOVETT:

Q. Will you state whether or not the proposed station will operate in conjunction with the Telegraph-Herald?—A. The proposed station will be operated as an entirely separate entity. There will be no combination rates, and the only reference to the Telegraph-Herald will be made in an occasional station announcement, for example "This is the Tele-graph-Herald Station."

There will be certain individuals on our staff who will put on news broadcasts, and their name and their connection with the paper will be mentioned in exchange for the program they produce for us.

The EXAMINER. That would include news commentaries and something like that?

The WITNESS. That is correct.

By Mr. LOVETT:

Q. Who will be in charge of the broadcast which will originate from your newspaper offices, where the material does originate from the newspaper offices?—A. That will be directly in charge of our managing editor, Mr. Harry Slechter, who has had ten years' experience in broadcasting news, and any other material that might originate under his supervision in his department, with a station at Tampa, Florida, WDAE.

Mr. ROLLO. I object to this testimony.

The EXAMINER. State your objection.

Mr. ROLLO. The witness is attempting to describe the qualifications of another man of the organization who will have control of program direction.

The EXAMINER. I think he can tell the man's qualifications. If he has been employed by some other concern in a certain capacity, I think it is competent to tell what his employment was.

What is the name of this employee?

The WITNESS. Mr. Slechter, our managing editor. He has management of the editorial department of our newspaper, and the programs such as news flashes and the territorial news, and news commentaries will be entirely under his supervision.

Mr. ROLLO. I submit any testimony from this witness as to the qualifications of the other man is clearly hearsay, and
63 I would like to ask one or two qualifying questions, if I may?

The EXAMINER. You may go ahead.

By Mr. ROLLO:

Q. When did this Mr. Slechter come to your organization?—A. Approximately two months ago.

Q. How long have you known him?—A. Since the time of his employment.

Mr. ROLLO. I submit on the basis of two months' acquaintance with this man, he cannot testify as to his qualifications except for the past two months.

The EXAMINER. Is there anything in the deposition as to his qualifications?

By Mr. LOVETT:

Q. Did you investigate his qualifications before he was employed by the Telegraph-Herald?—A. Yes; I did, and I have here letters which will show.

The EXAMINER. Is he here to testify?

The WITNESS. No; he is not.

Mr. LOVETT. I submit the witness is merely stating that this gentleman has had radio experience over a period of ten years, and that is perfectly competent for any one to state.

The EXAMINER. Do I understand that he had worked for WDAE for a period of time?

The WITNESS. Yes; and another station, WDSU, at New Orleans.

Mr. ROLLO. How can this witness know of his own knowledge that the man had worked there?

The EXAMINER. He could not except by what people had told him, and that would not be competent.

Mr. LOVETT. He would not know unless he went down to that particular locality before the man left that employment, which would be unreasonable to expect.

The EXAMINER. Were there not some depositions taken in this case?

The WITNESS. Correct.

The EXAMINER. Could you not have had this man testify and give a deposition at the time the other depositions were taken, as to his qualifications?

64 Mr. LOVETT. Yes: but I presume that would be the only thing he could testify to, the fact he had been employed in radio for ten years.

The EXAMINER. That testimony is not competent, it is clearly hearsay. You are a lawyer, Mr. Lovett, and a good lawyer, and you know very well that is purely hearsay testimony. The objection will be sustained.

By Mr. LOVETT:

Q. Will you state whether or not the same policy which has prevailed in the publication of the newspaper will prevail in the operation of the proposed station?

The EXAMINER. What do you mean by "policy"?

Mr. LOVETT. The executive policies, their attitude towards education, agriculture, religion, and so forth.

The EXAMINER. Go ahead.

By Mr. LOVETT:

Q. Will you answer that question?—A. Well, those particularly policies will be the same as they are applicable to the radio station.

Our columns of the paper have always been open for all agricultural, educational, and religious matters, and we have devoted considerable space to all of those departments, which I think the depositions will show, and of course, they speak for themselves.

Q. In matters concerning public questions and so forth, how will they be treated?—A. Well, the station will not be operated with that in view. We do not intend to direct any given policy as far as it applies to the listening public of the station.

Q. You do not intend to create or influence public opinion?—A. No; positively not. The station will be open, as I say, to everyone, civic, religious, educational, and agricultural in the same relation as our paper has been open to the publication of that particular news.

Q. You propose, as I take it, to broadcast both sides of all questions, and your news broadcasts will be of both sides of a particular situation involved?—A. Yes; positively both sides of every question.

Q. Do you plan to open the station to political broadcasts during political campaigns?

65 Mr. ROLLO. If the Examiner please, I may have missed it, but I do not recall any testimony as to what connection this gentleman would have with the radio station.

The EXAMINER. He has not stated definitely what his relation would be.

Mr. LOVETT. He stated he was a member of the board of directors, that he had been authorized to appear here, and he would be the one to carry out the policies determined by the board.

The EXAMINER. Is he going to be the director of it, or the station manager?

Mr. LOVETT. Merely in a supervisory capacity, I gathered from his testimony. I understand they will have a station manager.

The EXAMINER. Who will be the manager of your station?

The WITNESS. That has not been decided definitely. We have several applications on file of studio managers, and it is a question of ascertaining their competency in being able to manage our radio station.

The EXAMINER. I understand you are employed to see that the policies of the board of directors are carried out?

The WITNESS. That is correct.

The EXAMINER. That is your duty?

The WITNESS. That is correct.

The EXAMINER. You may go ahead to something else, Mr. Lovett.

Mr. LOVETT. I believe that is all of this witness, Mr. Examiner.

The EXAMINER. You may cross-examine.

Cross-examination by Mr. ROLLO:

Q. Mr. Arndt, you stated in your direct examination that you maintained a large reportorial staff in Dubuque for the Telegraph-Herald. Can you tell us how many reporters you have that cover Dubuque only?—A. For the city of Dubuque there are five reporters and one society editor and her assistant.

Q. So that you have a total of seven covering local news in Dubuque?—A. That is correct.

66 Q. You also stated, I believe, that Dubuque was quite a business and manufacturing center?—A. Yes.

Q. In enumerating the manufacturing places there, you did not mention Klauer Manufacturing Company. Is there such a company in Dubuque?—A. Yes; I overlooked the Klauer Manufacturing Company.

Q. In what business is that company engaged?—A. One of their principal industries is snow machinery.

Q. What is that?—A. The manufacture of snow-removal equipment, and culverts, road equipment, and the fabrication of certain other steel products.

Q. Would you say that that is one of the larger manufacturing industries of Dubuque?—A. Yes; it is.

Q. Does that company have any family relationship to the ownership of radio station WKBB, to your knowledge?—A. Yes.

Q. In fact, Mr. Klauer of radio station WKBB is the same Mr. Klauer of the Klauer Manufacturing Company?—A. That is my understanding.

Q. In the estimate you gave of the rural population of Clayton County you stated it was 100 per cent rural, then you proceeded to enumerate the population of the four small towns in that county. You included those towns as rural population in Clayton County, did you not?—A. Yes; by reason of the fact that in the small communities they are mostly retired farmers, and that happens to be the figure that the Census Bureau gave me.

Q. Why did you deduct the small towns of about the same size in other counties from the rural population? A. You mean of a thousand or more?

Q. Yes, sir.—A. Why did I deduct them?

Q. Why did you deduct them in most instances and not deduct them in Clayton County?—A. I enumerated, to my knowledge, four that were a thousand or over, and that was Elkader, the county seat, Strawberry Point, McGregor, and Guttenberg.

Q. And you included those as rural population, that is correct, is it not?—A. Yes; that is exactly what the Census Bureau's figures show.

Q. In Grant County, Wisconsin, you enumerated Cuba City, 1,157?—A. That is right.

67 Q. You did not include that as rural population, did you?—A. Not all of it. You understand, as I stated before, in these small community towns there is a certain percentage of the population in the town that are retired farmers, who have a definite interest in agricultural problems and are so regarded as rural population.

Q. Take Grant County, you stated there was a total population of 38,469, of which 89 percent was rural, where did you obtain that 89 percent figure?—A. I obtained that from the Bureau of Census in Washington.

Q. You tabulated his figures, did you?—A. I tabulated the percentages he gave me; yes.

Q. It is true, is it not, the small towns in Grant County that you mentioned such as Fennimore and Platteville, are mining rather than agricultural towns?—A. Not the principal industry. Some few mines might be in the vicinity of Benton, which is not so far Cuba City, but they have been at a standstill up until about maybe a year ago, I don't know exactly the date.

Q. How about Platteville, isn't that a mining town?—A. You are speaking of the rural area of Platteville?

Q. No; the city itself? Isn't it the center of a mining industry?—A. No; it could not be regarded as the center of a mining industry?

Q. Are there mines in and around Platteville?—A. There are, I think, two mines or three mines in the vicinity of that section. I would say in the southern quarter of Grant County.

Q. Coming to the advertising media available to the area you propose to serve by your station, you mentioned certain daily and weekly newspapers, but you did not mention any radio stations. Are radio stations advertising media in your opinion?—A. Station WKBB——

Q. (Interposing) Answer my question; a radio station is and advertising media, is it not?—A. Yes.

Q. What stations as advertising media, serve the territory you expect to cover?—A. I don't know of any that cover the territory we expect to cover.

Q. Does WKBB serve a portion of that area?—A. I am not an engineer, but I would say it serves Dubuque County.

68 Q. That is a portion of the terirtory you propose to serve?—A. That is one-sixth of the territory we propose to serve.

Q. Would you say that WMT serves any portion of the territory you propose to serve?—A. Yes.

Q. Do you know whether that is a commercially owned station?—A. Yes.

Q. It is an advertising medium?—A. Not in that particular area.

Q. But it serves a portion of the area you propose to serve, does it not? A. Yes.

The EXAMINER. I wish you would develop what portion of the area it would serve.

Mr. ROLLO. Mr. Examiner, I realize the witness is not an engineer, and I hesitate for that reason to ask such questions. That testimony, I believe, will be covered thoroughly by the engineering witnesses.

The EXAMINER. All right, proceed.

By Mr. ROLLO:

Q. Do you listen to WMT programs at all?—A. Occasionally.

Q. Do they broadcast agricultural programs?—A. Yes, sir.

Q. Are those programs directed to the Iowa farmer in particular?—A. Not in particular, but in some few instances it is possible. You understand, I do not sit at the radio and listen-in on WMT all of the time.

Q. But you have heard a number of agricultural programs over that station?—A. That is correct.

Q. Do you listen to WMAQ occasionally?—A. Yes.

Q. That serves the Dubuque area very well?—A. Fair.

Q. Do they broadcast any agricultural programs?—A. They have The Farm and Home Program.

Q. That is The Farm and Home Hour of the National Broadcasting Company?—A. That is right.

Q. It is a daily feature, is it not?—A. You are correct.

Q. What time does it come on at Dubuque, if you know?—A. I think it is around one p. m., I am not certain.

Mr. LOVETT. It is in the depositions that it is at eleven-thirty.

60 By Mr. ROLLO:

Q. Is it a full hour program?—A. No; it is not.

Q. How long a program is it?—A. I think it is thirty minutes.

Q. That is received in your area?—A. Fair; yes, sir.

Q. WHO is received in your territory?—A. I testified to that.

Q. Does that station broadcast any farm programs, to your knowledge?—A. Not to my knowledge, but I know they have such programs.

Q. How about WLS?—A. They have farm programs.

Q. Who owns WLS?—A. The Prairie Farmer, I believe.

The EXAMINER. Where is that located?

The WITNESS. In Chicago.

By Mr. ROLLO:

Q. You also mentioned WIBA as rendering some degree of service to Dubuque; does that station have agricultural programs?—A. What station is that?

Q. WIBA, Madison, Wisconsin.—A. Yes; they have agricultural programs.

Q. Who owns that station, do you know?—A. I couldn't tell you.

Q. It is privately owned, isn't it?—A. I couldn't tell you.

Q. Is there another station in Madison that renders service to your territory, WHA?—A. I couldn't tell you.

Q. Then, you have not heard that station?—A. No; I have not.

Q. Does WKBB render any agricultural programs that you know of?—A. Yes; but only of a general nature.

Q. Have you listened to them?—A. Yes. Once a week they have the Dubuque County broadcast, I think from eleven forty-five to twelve o'clock. That is on Mondays.

Q. Is it not true that they have a daily agricultural program at that same time?—A. Yes; they have, but not of any local nature.

Q. What do you mean by "only of a general nature"?—A. I think the word explains itself. It is more or less generalities, it is not designed specifically for the area we propose to serve, and the problems of this particular area.

70 Q. Of what do these programs consist, you say you have listened to them?—A. Aside from the program Mr. Carrigan puts on at Dubuque, they deal principally with farm problems in general.

Q. Are they the problems of the farmers surrounding Dubuque?—A. No; not entirely.

Q. What are these problems that they discuss, and what are the problems of the farmers in the Dubuque area?—A. I have in mind the recent grasshopper scourge, the white grub menace.

Q. Haven't you heard a number of broadcasts from WKBB on those two subjects, the grasshopper scourge and the white grub menace?—A. As it might pertain to Dubuque County.

Q. Then they have broadcasted information relative to these particular problems, have they not?—A. They might have.

Q. Do you have any other problems in mind?—A. Yes; problems of an educational nature. This area of approximately 40 or 50 miles, frequently depends upon certain spontaneous broadcasts, and by that I mean for instance, severe weather conditions.

Q. Does WKBB, to your knowledge, broadcast weather reports?—A. Yes; they do.

Q. Any other problems?—A. Yes; changes in curriculum, presenting consciousness to the mothers regarding the problems of school activities.

Q. We are referring principally, for the moment, to agricultural problems, and that would not fall within the agricultural problems, would it?—A. Not that particular statement, that would relate to education.

Q. Do you have any other agricultural problems in mind?—A. The talent that is available in these counties under the supervision of the agricultural agents in the respective counties, and in that connection I am thinking of the 4-H Clubs and auxiliary clubs, they have certain choruses, orchestras and instrumental selections.

Q. Have you heard such programs as those, the 4-H talent and the county agents' programs over WKBB?—A. I have heard the county agents on WKBB.

71 Q. Have you heard 4-H Club programs and discussions of their activities?—A. No, I have not.

Q. You do not listen to them all of the time?—A. I have stated I do not sit at the radio from seven o'clock until eleven every day.

Q. You did that on two days?—A. That is right.

Q. Is there a problem among the farmers around Dubuque in connection with eradication of the barberry?—A. In some localities.

Q. Have you heard that problem discussed over WKBB?—A. No, I have not.

Q. It could have been broadcast without your knowing it?—A. Possibly.

Q. In connection with your listening to WKBB, you stated that you listened September 2nd and September 6th?—A. Yes, sir.

Q. Did you listen any other days besides those days?—A. Yes, our radio is on intermittently during the day and night on Station WKBB. I am speaking of the radio in my home.

Q. Did you listen for the complete day on any other day besides September 2nd and 6th?—A. Without interruption?

Q. Yes.—A. No.

Q. You mentioned a specific item on the program of September 6th, an out-of-town orchestra for one hour.—A. No, I didn't state for one hour. You are speaking of September 2nd?

Q. September 2nd, that is correct.—A. For forty minutes, that was.

Q. What was that?—A. It was a forty-minute broadcast.

Q. What orchestra was it you had in mind?—A. Ernie Palmquist, I believe.

Q. Where is it located?—A. I don't know, but I know it is not in Dubuque.

Q. You don't know where it was playing?—A. It was playing at Melody Mill.

Q. Where is Melody Mill?—A. Melody Mill is better than two miles from Dubuque.

Q. Is that a dance pavilion?—A. It is.

Q. Do the Dubuque residents attend that place for dancing?—A. Naturally.

72 Q. As a matter of fact, it is a Dubuque dance hall, is it not?—A. Naturally. A lot of the out-of-town people would also gather at the Mill.

Q. The orchestra playing at Melody Mill is not an out-of-town orchestra, it is a part of the Dubuque activities, is it not?—A. I would not say so.

Q. Melody Mill is a part of Dubuque's entertainment line, is it not?—A. I would not say so.

Q. Melody Mill is a part of Dubuque's entertainment line, is it not?—A. It is out of the limits of Dubuque.

The EXAMINER. At this time we will take a recess until two o'clock.

(Whereupon at 12:15 o'clock a recess was taken until 2:00 o'clock p. m. of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 2:00 p. m., pursuant to the taking of recess.)

The EXAMINER. You may proceed with your cross-examination, Mr. Rollo.

Whereupon WILLIAM J. ARNDT resumed the stand, and was examined and testified as follows:

Crossexamination by Mr. ROLLO:

Q. Mr. Arndt, would you classify the Telegraph-Herald as a daily nonsectarian newspaper?—A. Yes.

Q. Is it the only newspaper of that class in Dubuque?—A. The only daily newspaper in the area, you mean, or in the city?

Q. In the city of Dubuque.—A. Yes, it is.

Q. Has that been true since its organization in 1836, I believe you testified?—A. Of course, I was not living in 1836.

Q. You know the early history of the newspaper, though?—A. Yes, the early history of the newspaper would show they have always been tolerant in all matters pertaining to news.

Q. Have there been times when there was more than one daily newspaper in the city?—A. Yes.

Q. When was that?—A. Up until 1927, we had the Times-Journal.

73 Q. What became of the Times-Journal?—A. It was consolidated with the Telegraph-Herald.

Q. So that the Telegraph-Herald is today actually a merger of those two newspapers that formerly existed?—A. Yes.

Q. You stated on direct examination, I think, that Radio Station WKBB had never approached you with reference to obtaining program listings in your newspaper, if I understood you correctly?—A. That is right.

Q. Are you in such a position at the newspaper that you would know of any approaches that had been made by the station to the newspaper?—A. Yes, I would.

Q. So that you want your testimony to be that they never have approached the newspaper?—A. That is correct.

Q. With regard to your studios, what space have you provided?—A. The studios would be located, as I testified before, on the second floor of the Telegraph-Herald, a building which fronts Eighth Avenue. It is space that is not utilized for anything now.

Q. Do you propose to use the entire second floor?—A. No, we do not.

Q. How much of the space do you expect to use?

The EXAMINER. The square feet is what you have in mind there, I suppose?

The WITNESS. I can give you approximately the area.

By Mr. ROLLO:

Q. That is what I want.—A. It will be about 100 feet by approximately 125 feet.

Q. Just what are your plans, how many studios, and how many offices and so forth, do you propose to make out of that space?—A. Two studios and ample offices, depending on the requirements as to the number of offices.

Q. You do not know how many offices you will have, at the present time?—A. No.

Q. What is that space used for now?—A. It is vacant at the present time and always has been since the construction of the building.

The EXAMINER. What size building have you?

The WITNESS. The building takes in a full block from West Avenue to Robinson Street and from Bluff Street to the alley on West Eighth Avenue.

The EXAMINER. A two-story building?

74 The WITNESS. That is correct. It is constructed in height really as a three-story building, but there is a mezzanine floor over the general offices and it is a two-story building from that standpoint.

By Mr. ROLLO:

Q. Will you itemize for me the construction cost you estimated at $25,000 as a whole?—A. I will give you my estimates exactly if you will let me refer to my records, if you are speaking of construction.

Q. Construction of the station which you estimated at a total of $25,000?—A. That is correct. The items are: transmitter, $10,000; microphones, $500; remote equipment, four amplifiers and microphones, $800; short wave equipment, $1,000; antenna system, $3,000; transmitter house, $2,000; studios and office construction, $5,000; furnishings, $2,000; turn tables, $500; installation charges for circuits, two type A circuits from the studio to the transmitter, $200; four connections, $40; three drop connections, $22.50; all making a total of $25,062.50.

Q. As to the transmitter, $10,000, what type of transmitter do you propose to install?—A. A Collins Radio Company type 20-A.

Q. Have you made inquiry as to the actual cost of that transmitter?—A. Yes.

Q. And $10,000 is the price quoted you?—A. That is correct.

Q. As to your antenna, $3,000, what type of antenna do you propose to install?—A. I am sorry I am not an engineer, but Mr. Barron will testify as to the type of antenna system.

Q. Where did you obtain this estimate of $3,000?—A. Of my own knowledge I know that an antenna system is priced in that quota of $3,000. That is with 185-foot radiator.

Q. Do you propose to install a 185-foot radiator?—A. That is right.

Q. Have you made any provision for the cost of the installation of the ground system?—A. I think that Mr. Barron had better testify to that. I am not an engineer, you understand.

75 Q. You testified that $25,000 was your estimate of the cost of the entire station?—A. That is right, it is an estimate, you understand.

Q. Have you made any estimate of the cost of the installation of the ground system?—A. I think that Mr. Barron will testify to that.

Q. Did Mr. Barron prepare this estimate or did you prepare it?—A. I prepared it. As far as the cost of the antenna system was approximated as $3,000 for me, which I included in my estimate.

Q. Did that $3,000 also include the cost of the ground system?—A. Yes.

Q. Do you propose to lease the land on which you will build your transmitter, or are you going to purchase it?—A. The details have not been worked out as yet.

Q. If it is to be purchased there will be the additional item of land in this estimated cost, will there not?—A. Yes, if it is a purchase.

Mr. LOVETT. The witness indicated that tentative leasing arrangements had been made which would indicate it would be a rental charge instead of a construction charge.

By Mr. ROLLO:

Q. I am not quite clear on the equipment you have here for remotes. You have one $800 item and installation charge of $200.—A. That is right.

Q. There are no other items in there with regard to remote control equipment?—A. The $800 for the remote control equipment and the installation charges, yes.

Q. Just what equipment will that $800 cover?—A. Four amplifiers and microphones.

Q. What will the $200 item cover?—A. The two class A circuits from the transmitter to our studios. You realize the transmitter will be located about three miles outside of the city of Dubuque.

Q. That is to take care of the line from the transmitter to the studio?—A. That is right, the line charges.

Q. You propose to install a number of remote control lines to various parts of the city, do you?—A. We propose to install permanent remotes in the University at Dubuque.

Q. Just a minute, you have made no provision for that
76 installation, or is that in the item you have given me?—A. Yes, that is included in the four connections and the three drop charges.

Incidentally, that data was quoted to me by the local telephone company, and I have a letter here to that effect, if you desire it.

Q. Never mind about that.—A. I am just qualifying the costs as you understand.

Q. What provision have you made then, in your itemized statement for the remote control line to the University of Dubuque?—A. The cost of the remote will be based on the price quoted me of 75 cents per quarter mile per month, based upon the actual distance of the telephone line from our studio to the source of the program.

Q. That price of 75 cents per quarter mile is for what is known as a single pair, that is one way broadcast?—A. That is for one line.

Q. At the University of Dubuque do you propose to install two lines so that you can talk back to the remote point?—A. For proper monitoring and so on.

Q. That will cost double the figure you quoted of 75 cents?—A. The exact distance could not be determined at the moment.

Q. You did not understand my question, it will cost you $1.50 for the two lines?—A. Yes, that is correct.

Q. Can you estimate the distance from the studio to the University of Dubuque?—A. I would say it may be a quarter of a mile, just as a guess.

Q. What did you expect your monthly rental for that one line. $1.50 a month?—A. No, it will be considerably more than $1.50 a month.

Q. How much will it be?—A. You are speaking just of the line charges?

Q. That is correct.—A. Excluding the microphones, that is all, just the line charges, it will be between $7.50 and $10 a month.

Q. Per pair, or for the two ways?—A. Possibly per pair, it depends, of course, on the distance of the telephone lines from our studio to the remote source.

Q. So that a fair estimate of that particular remote control would be the rental per month of about $15 for the two way circuit?—A. I think that would be a fair estimate.

77 Q. What other remote controls do you propose to establish?—A. The remote control in the Federal Building

which is located two blocks from our studio, and which will be in the Weather Bureau office.

Q. What would be your estimate of the monthly rental of that particular line?—A. The minimum charge is, I think, $1.50.

Q. If I refresh your recollection by stating the minimum charge is $2.50 at Dubuque, per pair, would that be correct?—A. $2.50 per pair, yes. I think I will have to refresh my memory on that.

Mr. LOVETT. Mr. Examiner, I think we are going into needless detail here. The applicants have indicated that they have plenty of resources and are prepared to handle the necessary amount of expense that may be incurred.

The EXAMINER. What is the object of these details, Mr. Rollo?

Mr. ROLLO. If the Examiner please, I want to show through these questions that they have omitted a substantial item there in their proposed plan in arriving at the estimated cost, and I believe I can show it is a substantial amount.

The EXAMINER. You would not regard that $2.50 as a substantial amount?

Mr. ROLLO. Not for that item alone, but when we get through, I think it will be a substantial amount.

The WITNESS. $2.50 a month is the minimum charge.

By Mr. ROLLO:

Q. That minimum charge is for just one way, per pair, which means only one direction?—A. At 75 cents per quarter mile the distance to the Federal Building is only two blocks, so the minimum charge in that event would be $2.50 for the two circuits.

Q. What other remote controls do you propose?—A. The Columbia College.

Q. What estimate would you give on that?—A. A monthly of approximately $10 to $15 per month.

Q. What other remotes?—A. That is all. I believe I testified as to those three.

Q. Were you present at the taking of depositions in Dubuque?—A. Yes, I was present.

78 Q. You heard the testimony given at that time?—A. I did.

Q. Do you recall the testimony of the representative of St. Lukes Church to the effect that a remote control had been promised them in order to broadcast the chimes of that church?—A. I do not remember whether I was present at that particular deposition or not.

Q. If that testimony is shown in the deposition, what would you estimate the cost of a remote control to St. Lukes Church would be?—A. St. Lukes Church is a distance of, I believe, only eight blocks from our studio.

Q. So that the minimum charge would apply there?—A. I think it would. It is about 600 feet to a block in Dubuque, and you can figure it out.

Q. That would be $2.50 for that line, then?—A. I think so, yes.

Q. Do you recall the testimony of the representative of the Immaculate Conception College to the effect that a remote control line had been promised to that college?—A. I don't know of any such promise having been made.

Q. If such testimony is contained in the deposition, what would you estimate the cost of a remote control line to that organization?

Mr. LOVETT. If the Examiner please, the witness has indicated he would have four permanent remotes, and the depositions speak for themselves, but I was there at the taking of the depositions, and I think an examination of them will disclose these remotes being mentioned by Mr. Rollo were for occasional broadcasting, and not as a permanent proposition.

The EXAMINER. He can testify whether it is a permanent or a temporary affair, and may be cross-examined on the basis of the examination on direct, but of course he would not necessarily go into the detail of each of these witnesses. As a basis, however, for cross-examination, he can refer to the depositions.

The objection will be overruled.

By Mr. ROLLO:

Q. What would you estimate to be the cost of a remote control to the Immaculate Conception College?—A. We do not contemplate a permanent remote there.

79 Q. If the testimony in the depositions is to the effect that a remote control line is to be installed, that is erroneous and you wish that to be changed, do you?—A. The remote would be installed whenever they wished it.

Q. What is the installation charge for a remote control line?—A. You mean for what?

Q. For one-time use.—A. Speaking of the Immaculate Conception College?

Q. Connecting up with the college for one time use, what would the telephone company charge you for the installation of that?—A. It would vary between $30 and $50 for a one-time broadcast.

Q. If your program plans showed you were going to broadcast at least once a week from that college, would you for that have a permanent line installed, or just installed once each week?—A. If sufficient program material could be developed at that source, then we would be interested in possibly installing a permanent remote; but in all probabilities that occasion would not arise.

Q. Do you recall the testimony of the representative from the Wartburg Theological Seminary to the effect that he had a very fine organ, and that the organ would be broadcast on a regular basis?—A. Not as a permanent remote.

Q. You do not propose to install a remote line in there frequently at a cost of $75?—A. Occasionally.

Q. Do you recall the testimony of the Grant County Agricultural Agent?—A. I was in on a good portion of that; yes.

Q. His county seat is Lancaster?—A. That is right.

Q. How far is that, approximately, from Dubuque?—A. Do you mean air miles or road miles?

Q. For the purpose of installing remote control lines it would be road miles, I presume.—A. Thirty-two to thirty-five miles.

Q. Do you know what the rental charge of a remote control line from Dubuque to Lancaster would be, a permanent remote line?—A. We do not propose to install a permanent remote to Lancaster.

Q. Do you know what the installation charge would be for one-time use?—A. Yes; for one hour or fraction thereof, $42.50 per occasion, and $4.13 for each additional hour after the first hour.

80 Q. What class of line is that?—A. Generally Class "D." Iowa has no "A," "B," or "C" lines available for broadcast purposes.

Q. We are speaking of Wisconsin now.—A. I think the same rule would apply to that section of Wisconsin.

Q. Do you believe that a Class "D" line would be satisfactory for broadcast purposes?—A. Yes; I do.

Q. For music as well as for voice?—A. Yes.

Q. That is your opinion?—A. I know that it is.

Q. You do propose to install remote control lines on occasions to Lancaster, Grant County, Wisconsin, do you?—A. Yes; occasionally.

Q. Do you recall the representative of the county schools of that county testifying at the taking of your depositions?—A. Some of it; yes.

Q. If I recall correctly that testimony, it was to the effect that a part of the programs originating in the county seat or at the various schools throughout the county, were to be broadcast by your proposed station?—A. Occasionally broadcasts such as his commencement exercises for the entire county, there would be a definite need for that type of broadcast, and we would then run our line out there to broadcast that particular program at the source.

Q. Rather than take up any further time on all of these other counties, that was generally true also of the county agricultural

agents and the county superintendent of Jackson County, Iowa, Clayton County, Iowa, Delaware County, Iowa, and Jo Daviess, Illinois?—A. No; that is not entirely correct. The agricultural programs designed specifically for these six counties, including Dubuque County, will originate in the Federal Building. The county agents will make the trip from their respective counties to Dubuque to put on these weekly broadcasts in Dubuque, but occasional remotes will be used for something of special interest.

I have in mind, for instance, the corn-husking contests which is quite a thing in Iowa, the Dairy Congress held within the county, or a particular draft-horse show. We had one of those in Platteville, Wisconsin, not so long ago. In cases of that nature, we would be interested in running a line out to the source of the program.

81 Q. Do you know what the installation costs are going to be for each of the other counties, you have given Grant County already?—A. That can be ascertained by my previous testimony that a charge of $42.50 per hour applied, and $4.13 for each additional hour on a mileage basis of 30 to 35 miles. The other remotes, of course, would be either less or in addition to the charges below 30 miles or up to 50 miles.

Q. There would be quite a number of such events in connection with the agricultural agents' activities, which would require remote broadcasts, would there not?—A. No.

Q. Such events as are described in the depositions are the type you propose to broadcast by remote control?—A. Yes; the corn husking contests occur once a year; your commencement exercises, as you know, occur once a year; these draft-horse shows, at the very most, twice a year; and the county fairs once a year.

Q. With reference to the county-school broadcasts covered in the depositions, is it your proposal to transport the various talent such as children's bands, glee clubs, choruses, and so forth, from the different schools into Dubuque, or do you propose to install remote lines for that purpose?—A. No; the small groups of talent produced by the county school system, they will come to Dubuque, but where we have a large group involving possibly 50 and a 100 persons, we would not expect them to come to Dubuque to broadcast; we would send a remote line out there.

Q. How far is it to the county seat of Jackson County, from Dubuque?—A. Thirty-three miles exactly, I think.

Q. How far is it to Elkader, the county seat of Clayton County?—A. Sixty-one or sixty-two miles.

Q. How far is it to Manchester, the county seat of Delaware County?—A. Approximately 42 miles.

Mr. LOVETT. Is this air line or road?

The WITNESS. I think he is speaking of road distances, that is what I am giving.

By Mr. ROLLO:

Q. What is the county seat of Jo Daviess County?—A. Galena.

82 Q. How far is that from Dubuque?—A. Approximately 16 miles.

Q. What rates do you propose to charge over the proposed station?—A. The rates have not been determined. However, we expect to base our rates on the sale of approximately 25 to 30 percent of the time.

Q. Do you know whether or not WIBA at Madison, Wisconsin, carries programs such as these remote programs you have been describing, the horse show and that sort of thing?—A. No, I do not.

Q. They could broadcast them without your knowledge, could they not? I mean, you are not a regular listener to the station?—A. No, I am not. They could broadcast them without my knowledge.

Q. In connection with your personnel for the proposed station, you except to maintain a separate sales organization from the newspaper?—A. Yes.

Q. They will be new employees, entirely?—A. We naturally will have to employ a sales staff qualified to sell radio advertising, which is distinctly different from newspaper solicitation.

Q. With reference to the monthly operating costs of the station, will you give me an itemized list of those, as you have totaled it up at $2,000 per month?—A. You want me to give the estimated salaries?

Q. The operating costs total $2,000, and the salary item would be just one item.—A. The items are, studio manager, $200; chief engineer, $150; assistant chief engineer, $125; three operators, $300; that is $100 apiece per month; program director, $175; chief announcer, $150; two assistant announcers, $100 each, making $200; one stenographer, $65; power and light, $100; transmitter line, $50; miscellaneous line charges per month, $25; transcription service, $100; repairs, $100; news service, $50; miscellaneous, $50.

Q. That totals approximately $2,000?—A. Yes.

Q. Have you made any investigation into what it is going to cost for music and copyright fees?—A. The annual charge of, I think it is called the Artists-Composers, is either $500 or $1,000 a year.

Q. You have not included that item in this list, but that will have to be added on to your monthly operating costs?—A.

83 If such a charge is necessary at this time, that would have to be prorated.

Q. You expect to play copyright music over your station, do you not?—A. Yes, indeed.

Q. I note you have no depreciation item here; how do you expect to take care of that, will that be added on to the monthly cost?—A. I think the monthly repairs would cover that. $100 is added for that item.

Q. $100 a month is all of the depreciation you expect to write off?—A. Yes.

Q. In addition to the repairs that will have to be made from time to time?—A. No; that includes all of it.

Q. What talent costs have you provided for?—A. About $100 a month.

Q. Is that the transcription service, you mean?—A. No; that is live talent.

Q. Where do you find your live talent item in what you gave me?—A. If you would total that, I believe you will find that including the $100 for talent, the amount is closer to the $2,000 that I indicated.

Q. In other words, the total is slightly less than $2,000, so that you could still add $100 a month for the talent and still come within the $2,000?—A. You have the figures there and you can calculate that.

Mr. LOVETT. Mr. Examiner, the witness just testified it was the estimated operating expense, and there is nothing binding in that, and he stated they proposed to spend what is necessary for the operation of the station.

By Mr. ROLLO:

Q. You have $100 for transcriptions; what transcription service do you have in mind?—A. Thesaurus, a subsidiary of the NBC.

Q. What is the charge per month for that service?—A. $100 a month.

Q. You do not expect to take any other transcription service?—A. Not at the moment.

Q. $50 for news, what does that contemplate?—A. The franchise rights to broadcast the United Press news in addition to the cost; of course, of newspaper publication.

84 Q. If I understand it correctly, the newspaper has the AP franchise?—A. I am speaking of the UP, the United Press, there will be an additional charge of that, in that neighborhood.

Q. In order to permit your broadcasting station to broadcast the news?—A. Yes; the UP news.

Q. So that you will have only the UP plus your local reporters, coverage?—A. For the present, if that is adequate.

Q. Do you have an exclusive franchise on United Press at the newspaper?

Mr. LOVETT. I object to the materiality of that, Mr. Examiner.

The WITNESS: You mean exclusive?

The EXAMINER. The objection will be overruled. You may answer the question.

The WITNESS. We have a United Press franchise.

By Mr. ROLLO:

Q. Is it such that it is exclusive for you in your territory?—A. Only in so far as it relates to the news coverage in the city of Dubuque only, of which maybe East Dubuque might be regarded as within the area, but I would have to look into the records to ascertain that.

Q. What other service does the newspaper have?—A. The Associated Press.

Q. That is an exclusive franchise, is it not?—A. Yes. You understand that is a sort of a reciprocal service, every newspaper is a member of it, and the service is produced by all of the newspapers that are members of the Association; in other words, it is an association of daily newspapers and international news service.

Q. Of those three, you only propose to use the United Press news service over the station?—A. Yes; at the moment.

Q. In your testimony on the assets and liabilities of the Telegraph-Herald, you stated the assets were in excess of a million dollars. I do not want to go into the details, but do you recall what valuation you placed on the news franchise and the newspaper circulation?—A. Included in this is merely a certain amount to take care of our circulation structure.

85 Q. What is that amount?

The EXAMINER. Does that include goodwill?

The WITNESS. That includes goodwill and various services, subscriber personnel, and so forth. The circulation structure is included at $233,984.26.

By Mr. ROLLO:

Q. That is circulation and goodwill, that is the same thing we call "goodwill" in other businesses?—A. That does not include certain patents and goodwill. There is another item set forth here of $41,365.46 which we classify as patents and good will.

Q. In addition to that you have a valuation in your assets set on your AP franchise?—A. No.

Q. Do you have one on your UP franchise?—A. No.

Q. Or on your INS?—A. No, sir.

The EXAMINER. Has that financial set-up been offered in evidence?

Mr. ROLLO. No sir; it has not.

Mr. LOVETT. He merely testified to the financial set-up.

The WITNESS. I will be glad to offer it in evidence if you desire.

By Mr. ROLLO:

Q. Are the newspaper franchises included in the item of patents and good will?—A. No.

Q. You place no value on your news franchises in your asset column?—A. There is nothing to include.

Q. Is it not correct that you value that UP franchise at $30,000?—A. No, it is not.

Q. Can you tell me what anyone would have to pay to obtain the right to use the United Press service in Dubuque?—A. I don't know.

Q. Do you know what would have to be paid by the Telegraph-Herald to use the United Press service in Dubuque?—A. I don't know.

Q. Referring to your Exhibit 3, which is the list of retail and wholesale outlets in Dubuque, Iowa, from what source did you get that information?—A. The 1933 Bureau of Census, 1933 market survey of the Bureau of Census.

Q. Is that the Federal business census of 1933 you are referring to?—A. Yes.

86 Q. Do you consider grocery stores as prospective radio advertising clients?—A. It largely depends upon their importance in the community.

Q. Do you consider the small grocery stores on the corners throughout the community prospective radio advertisers?—A. It depends upon the volume of business the store produces.

Q. What volume of business would you set as the deadline between those that would advertise and those that would not?—A. That is up to the man that operates or manages the store, or owns the store.

Q. What, in your opinion, would be the line of demarcation between those you would approach as prospective advertisers, and those you would not?—A. I don't know exactly.

Q. As a matter of fact, you do not think grocery stores would advertise over the radio, do you?—A. Yes, they would. I told you before it depends upon the volume of business they do.

Q. What volume would be necessary before they would advertise over the radio?—A. It depends on how much they want to spend over the radio. You would have to amplify your statement.

Q. In your mind you have a line of demarcation between those stores that would advertise and those that would not. You have testified to that effect?—A. All stores might be interesed in advertising.

Q. You would expect all grocery stores to be interested in advertising?—A. Oh, no.

Q. Where is the line of demarcation, in your mind?—A. Let me ask you this, how much is this party going to spend on radio broadcasting?

Q. You have from time to time grocery stores listed on this exhibit, and I want to know what percentage of those stores would be prospective advertisers?—A. Possibly 50.

Q. You have 38 meat markets listed on your exhibit, and do you consider meat markets as potential radio advertisers?—A. Some of them are.

Q. About what percentage of this 38?—A. Possibly eight to ten.

87 Q. You have the five- and ten-cent stores, five of them, listed in your exhibit; would you consider they would advertise by radio?—A, Yes.

Q. You think they are prospective radio advertisers?—A. Yes.

Q. You have 42 filling stations; do you expect these filling stations to advertise?—A. Yes, some of them would.

Q. What would be the classification there between those that would and those that would not advertise?—A. The more outstanding filling stations that have the one-stop service with the various accessories and so forth, the larger filling stations.

Q. How many of these 42 would fall in that category?—A. Possibly five or ten, something like that.

Q. You have 30 restaurants, cafeterias, lunchrooms, and other eating places, would you consider them prospective advertisers by radio?—A. Yes sir, a small percentage, yes.

Q. How many of the thirty?—A. About five.

Q. You have 18 cigar stands; how many of those would you expect to advertise by radio?—A. Not very many, with the exception of the distributor.

Q. How many cigar and tobacco distributors do you have in Dubuque?—A. One, I think, at the present time.

Q. Of these 27 drug stores, how many of those do you think would advertise?—A. A good guess would be maybe ten to fifteen.

Q. They are just the ordinary drug stores found in every town, are they not, that is, the smaller drug stores, some chain drug stores, and so forth?—A. That is the general practice.

Q. What have you included in this miscellaneous fifty-five? A. Those that do not fall within that particular classification.

Q. You do not know whether they would be advertisers or not, do you?—A. That would have to be developed later.

Q. Referring to your 350 advertising accounts, I think you testified that your advertising files in the newspaper showed 350 accounts, of which 231 were active.—A. That is right.

Q. Is it you opinion that they all fall within the prospective radio class?—A. I don't know, I have not contacted all of these 231.

88 Q. You have contracted 32, have you not, or is it 60?—A. I have contacted 60.

Q. Without enumerating all of those 60, can you tell us what types of establishments they represent?—A. Well, there are style shops, loan companies, general stores, meat markets.

Q. You have a list of those available, have you?—A. Yes.

Q. May I see that please?

(A paper is handed to counsel.)

Q. This J. F. Stampfer Company, do you know whether that institution advertised or is advertising over WKBB this year?—A. I do not know.

Q. Mullen Brothers, do you know whether they have advertised this year over WKBB?—A. I do not think so.

Q. In these contacts you have made, have they all stated they would advertise by your radio?—A. Yes, contingent upon the rate and the type of program we would produce.

Q. Did you discuss the rates with them?—A. The rates have not been determined.

Q. But without exception they all agreed to broadcast if the rates were agreeable and the programs were of the right character?—A. Yes; of these particular 60. I contacted some more in addition to those.

Q. And those you contacted in addition to these 60 were not agreeable to advertising over your station?—A. The information they gave me was of such a nature that I do not think I should divulge it.

Q. About how many such advertisers were there?—A. I do not know the exact amount.

Q. Referring to your Exhibit No. 4, the tentative program schedule, on the first page of Sunday from 9 to 9:05 you propose a church calendar. In that connection how many churches are there in Dubuque?—A. I do not know the exact number, but by reason of the fact that Dubuque is a highly religious center, we must have at least from ten to fifteen—you are speaking of denominations or the total?

Q. Would 37 sound correct to you?—A. That would be a trifle high. It might be between 25 and that figure.

Q. And you propose then within a five-minute period on Sunday morning to announce the services, the pastors, the
89 subject matters and the special activities of those 25 churches?—A. It will merely be a brief resume of the time the church service begins.

Q. In what way does that particular program differ from the church announcements made by WKBB?—A. I do not know, I have not made an exact transcript of the church announcements of WKBB. other than I do know they make certain church announcements.

Q. They do make church announcements, do they?—A. In the half period from nine to nine-thirty. We follow that five minutes broadcast from 9:25 to 9:30 with the "Churches of Dubuque" which will cover any necessary announcements.

Q. How would that service differ from the church service broadcast over WKBB on Sunday morning?—A. In so far as we would be interested in running a remote to one of the outstanding Protestant churches and one of the Catholic churches, possibly.

Q. You are familiar with the Sunday morning church service broadcast by WKBB, are you not?—A. I have heard that.

Q. Do you know whether or not that is produced by the Ministerial Association of your city?—A. Yes.

Q. So that it may be necessary for you to subscribe to additiona transcription services?—A. I can't say as to that.

Q. What do you mean by the "Safety Flash" program on Sunday morning at 8:00 to 8:05?—A. That is a program that will originate in our studios, put on by the local sheriff and police offices, a timely broadcast warning people to guard against traffic accidents; in other words, it a safety feature.

Q. That would be about the same as the regular feature on WKBB consisting of talks by the City Manager, Chief of Police, President of the Safety Council, and so forth.—A. I don't know of any such broadcast.

Q. If such a broadcast is carried by WKBB, it is the same thing you proposed here.—A. I don't know.

Q. How many news periods per day do you propose, three?—A. There is a news flash, one——

Q. (Interrupting.) One at 9:00 to 9:15; is that right?—A. Yes, and the local market review would come under that category.

90 Q. Let us limit it to the news reports, you have one from 9:00 to 9:15; is that correct?—A. That is correct.

Q. When does WKBB broadcast its morning news report, do you know?—A. I don't remember, but it is in the morning.

Q. Do you mean Wednesday, September 2?—A. It is Thursday, September 2, I think.

Q. You have it Wednesday, September 2.—A. Well, September 2 is the day anyway.

Q. Is it true that they broadcast it on Wednesday, at 9:15?—A. Yes.

Q. You have another one from 12:00 to 12:15?—A. Our broadcast from 9:00 to 9:15 will differ in certain respects from theirs.

Q. Well, it is a news broadcast.—A. It is a news broadcast of timely news.

Q. WKBB broadcasts news reports beginning at 12:15 daily, does it not?—A. I don't know, I would have to be referred to the record on that particular day.

Q. You have another news report at 5:45 to 6:00 o'clock that is right, is it not?—A. The period of 2:45 to 3:00 o'clock as I have designated news commentary, that is all timely news, a resume of the news developed up to that period.

Q. That will consist of commentaries on the news current, actual news reports, would it not?—A. It will include both news reports and comments.

Q. Then you have one other one at 5:45 to 6:00 o'clock?—A. That is right.

Q. What is this Mother Goose program at 9:30?—A. That is a special program designed for the preschool-age children.

Q. That is a Thesaurus service, is it?—A. No; that would be developed by our mothers' clubs in Dubuque.

Q. You have a transcription on the program?—A. The introduction of music would be a slight little selection of some music infants are interested in, or those of a preschool age, and then the talk as to the problems of the preschool-age child will be put on by the mothers' club of Dubuque.

Q. I notice you have not a farm program on Monday, and you have that proposed to run five days a week, is that correct?—A. No, there is a farm program on Monday.

91 Q. What time?—A. From 7 a. m. until 6 p. m. we have——

Q. You misunderstood me. You have on Tuesday and the other week days, for example, a program at 12:30, the Delaware County Farm program, and on Wednesday from your previous testimony you propose to broadcast such a program as a daily feature, to be rotated each day in the week among the various counties. You do not propose that program on Monday, is that correct?—A. If you will refer to your copy of the program list, you will see at 12:30 to 1:00 o'clock the Dubuque County farm program.

Q. I beg your pardon, it is not on the copy of the exhibit I have, and that should be corrected.—A. That will be corrected.

Q. I notice you have quite a regular feature of Luke Ritz and his orchestra, have you ever heard that orchestra?—A. Yes; I have.

Q. Where do they play?—A. They play at various dances in Dubuque, and what we call the Dubuque Danceland.

Q. Is that orchestra in your opinion of sufficient caliber for radio broadcasting?—A. Yes.

Q. Referring to your list of additional talent, Exhibit No. 5, do you know whether or not any of the organizations or individuals listed on that exhibit are broadcast by WKBB?—A. Not to my knowledge.

Q. With reference to the policies to be adopted by the station, if I understood you correctly on your direct testimony, the station will be conducted along the same general lines as the newspaper, is that correct?—A. Yes; insofar as they are applicable to the station.

Q. I take it your newspaper is catering to the interest of the residents of your community, that is, supplying them with complete reports of local news?—A. In the public need they are.

Q. Will that same policy be followed over the radio station, giving complete coverage of local events?—A. Yes.

Q. Your newspaper did not carry any story on the arrival of WKBB at Dubuque when it first moved to Dubuque in 1934 or 1933, did it?—A. No; we did not.

Q. Is that not a news item of interest to the residents of Dubuque, particularly?—A. The question of the propriety of news is left entirely within the judgment and discretion of our managing editor.

92 Q. If your present application should be granted, would you publicize the opening of your station in your newspaper?—A. Yes.

Q. That would be of news value to the residents of Dubuque, would it not, in your opinion?—A. Yes; Dubuque and the entire area.

Q. Does it not also follow that the advent of WKBB was just as much news value to the area as would be that of your station?—A. No; because it does not serve the same area.

Q. Does WKBB serve Dubuque and the surrounding area?—A. It serves Dubuque County.

Q. What would be the advertising policies over the proposed station?—A. Just what do you mean?

Q. Will you adopt the same advertising policies in the station as you do in your newspaper?—A. The rate has not been decided yet.

Q. I said nothing about rates. I said will you adopt the same policies as to the type of advertising that you accept, as you do in the newspapers?—A. Yes; there are different ethical standards in advertising.

Q. I now show you a newspaper and ask you if that is a copy of the Telegraph-Herald of Friday, August 9, 1935?—A. It is.

Q. I call your attention to the ad appearing on page 3 in the lower left-hand corner, what type of advertising is that?—A. Seagram's Soft Still Gin.

Q. Does the ad quote the price of the product?—A. Yes.

Q. While we are looking at the newspaper, I call your attention to page 7, the last column on the right-hand side, and ask you to state if that is your radio department?—A. What do you mean, radio department?

Q. Is that all of the radio department of the newspaper, is that all of the radio publicity given?—A. This is a radio program published by us.

Q. That includes all of the radio programs you carry in the paper?—A. That is correct.

Q. Does that program include listings of WKBB?—A. No; it does not.

The Examiner. Do you publish the program of this station, WKBB?

The Witness. Yes, we do, Mr. Examiner, frequently in
93 connection with the advertisers who want to direct attention to a certain program. The record will show that such advertisements have frequently appeared in the paper.

By Mr. Rollo.

Q. Are those ads which mention WKBB paid for by the advertisers?—A. Yes.

Q. In other words, it is just the display advertising of a particular merchant in the town that happens to be advertising over the radio, you accept his display advertising, and that has the wording in it there is a program on WKBB at this hour; is that the type of advertising you are referring to?—A. Yes.

Q. The last newspaper I showed you was the issue of August 9, 1935, and I I now show you an issue of the newspaper dated May 20, 1936, and ask you if that is a copy of your newspaper?—A. It is.

Q. I call your attention to an ad appearing in the last column of page 2 at the top of the column, will you read that ad for us?—A. (Reading.) "Bonnie Briar".

Q. What else does it say?—A. (Reading.) "Scotch type blended whiskey."

Q. Just read the whole ad.—A. It says——

Mr. BERRY. (Interrupting.) Mr. Examiner, I am going to object to taking extracts of those advertisements and reading them. I do not object to the newspapers being marked and the witness identifying the advertisements and the newspapers being put in evidence, but taking a certain newspaper and picking out an advertisement of one brand of whiskey at $1.15 a pint does not necessarily reflect the policy of a big newspaper advertising the liquor. As your Honor knows advertising of liquor is now legitimate advertising, and just to select one of those items, I do not think is sufficient.

I do not object to introducing all of the newspapers if he wants to do that, and if he is going to read an advertisement here and there, then I am going to call for the whole newspaper to be introduced in evidence.

Mr. LOHNES. I am going to make that request anyway, Mr. Examiner.

The EXAMINER. I think if you want to get those into the record, Mr. Rollo, you had better introduce them, then you can identify what page the advertisements appear on.

94 Mr. ROLLO. Unfortunately, I do not have a duplicate copy.

Mr. BERRY. If the publisher cannot furnish a duplicate copy, we will waive that requirement.

The EXAMINER. I assume this witness, who is a director of the company, will supply additional copies to make them duplicates. I cannot see why just now the mere advertisement of Seagram's or some other brand of liquor is improper.

Mr. ROLLO. It is simply for this reason, it so happens the state of Iowa has a law prohibiting advertising of liquor in any form, and I propose to show that, and that is the purpose of my showing him this type of advertising.

In case the advertising of whiskey in and of itself may not be against the public interest, yet it is contrary to the law in the state of Iowa, and I think reflects very forcibly against the policy of this newspaper now asking for a radio station, and this witness has testified he would follow the same policy in connection with his radio station.

Mr. LOVETT. I would object unless it is shown he intended to advertise liquor over the proposed station.

The EXAMINER. You can introduce it in evidence. You necessarily would have to introduce the papers anyway if you were going to make that a point, and I am going to ask the witness to supply this Commission duplicates of the papers you offer in evidence.

The WITNESS. I will be very glad to do that if they will give me the dates.

Mr. ROLLO. For the purpose of the record I will read off the dates and the particular page numbers I want to call attention to.

Mr. BERRY. There is no objection by us to counsel calling attention to the particular advertisement he has in mind, I am not objecting to his pointing out the advertisment, but the point I made was to select from a big newspaper just one isolated advertisement that might not necessarily show the attitude of the paper.

The EXAMINER. I suggest, in order to shorten the record, you identify these newspapers as to the date of the issue and the page of that issue, and the location on that page of the advertisements which you are calling attention to, so that the
95 Examiner in reading the record will have no difficulty in finding the advertising in question.

Mr. LOVETT. Mr. Examiner, if these newspapers are going to be offered in evidence for the purpose of showing the applicant carries liquor advertisements in his newspaper, I object unless it is shown that the applicant is going to carry the same advertisements over the proposed radio station, as he has testified it is a separate entity.

The EXAMINER. I will overrule the objection. You may go ahead, Mr. Rollo.

Mr. ROLLO. We have already identified the issue of August 9, 1935, and the liquor advertisements appearing therein on page 3.

Mr. LOVETT. Mr. Arndt, can you go back that far and give the duplicate copies?

The WITNESS. I think I can.

By Mr. ROLLO:

Q. Wednesday, May 20, 1936, issue of the paper, ad appearing, on page 2;

Thursday, May 28, 1936, issue, a liquor ad appearing on page 5, page 11, and page 12;

Friday, May 29, 1936, liquor ad appearing on page 2, page 8 and two ads on page 9;

Sunday, May 31, 1936, issue, liquor ad appearing on page 17;

Issue of June 12, 1936, a liquor ad appearing on page 3 and page 10;

Issue of July 15, 1936, liquor ad appearings on page 2 and 8.

The WITNESS. I might state we have since discontinued the liquor advertising.

The EXAMINER. Do you to offer those now as exhibits?

Mr. ROLLO. Just a minute, Mr. Examiner. We have not yet completed it; I believe.

I would like to have these to which I have just referred to, marked WKBB Exhibit No. 1, marked respectively with the let-

ters—A, B, C, et cetera, and I offer the same in evidence at this time.

Mr. LOVETT. It is understood that I am objecting to the admission of these papers in evidence.

The EXAMINER. The objection is overruled, and the newspapers are admitted in evidence as WKBB Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, and 1-G, respectively.

96 (The newspapers referred to were received in evidence and marked, "WKBB's Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, Docket 3967," and are filed with the transcript in possession of the Commission.)

By Mr. ROLLO:

Q. I understood you to say you had discontinued liquor advertising?—A. That is right.

Q. When did you discontinue it?—A. Just recently.

Q. How recently?—A. I don't know definitely. Incidentally, I will state that the liquor law of the State of Iowa——

Q. (Interposing.) Just answer my question, when did you discontinue liquor advertising?—A. I don't know the exact date.

Q. Approximately was it a month ago?—A. Longer than that.

Q. Was it six weeks ago?—A. Approximately.

Mr. ROLLO: I now ask to have this paper marked WKBB Exhibit No. 2 for identification.

(The paper referred to was marked "WKBB Exhibit No. 2, Docket 3967," for identification.)

By Mr. ROLLO:

Q. I now show you what the reporter has marked WKBB Exhibit No. 2 for identification, and ask you if that is a copy of your paper of September 10, 1936?—A. Yes.

Q. That is four days ago?—A. Yes, September 10 would be.

Q. I call your attention to the first page of section 2, which is page 13 of the newspaper, and to the ad appearing in the lower right hand corner and ask you to tell us what it is?—A. That is "Bottoms Up."

Q. Is that a whiskey advertisement?—A. It so states. One of those must have slipped in.

Mr. ROLLO. I ask to have this paper marked WKBB Exhibit No. 3 for identification.

(The paper referred to was marked "WKBB Exhibit No. 3, Docket 3967," for identification.)

By Mr. ROLLO:

Q. I show you what has been marked WKBB Exhibit No. 3 for identification, and ask you if that is a copy of your
97 newspaper of Wednesday, September 9, 1936?—A. That is correct.

Q. I call your attention to the ad appearing in the lower left hand corner of page 4. What is that ad?—A. Seagram's.

Q. That is a liquor ad, is it not?—A. You should know.

Q. The EXAMINER. What section of the paper is that?

Mr. ROLLO. This is the first section.

By Mr. ROLLO:

Q. Then your first answer to my question that you had discontinued the liquor advertising, was an error, wasn't it?—A. I told you it was recently discontinued, but I don't know the exact date. I can assure you now it will not be carried from now on.

Q. I call your attention to the headlines of this newspaper, "Alleged Extortion Plot Revealed"; are you familiar with that news story?—A. No; I am not, except so far as I read it in the issue of September 9th.

Q. Does it involve the Klauer family of East Dubuque?—A. It involves William Klauer and Walter Klauer.

Q. Do you know if your reportorial staff approached Mr. Klauer to obtain the facts of that story before printing it?

Mr. LOVETT. I object to that as entirely immaterial.

Mr. ROLLO. It sounds as though it is, at this time, but it is a part of our story, to show the treatment the newspaper has given the radio ever since its entry into the city.

The EXAMINER. Let me see that paper.

(The newspaper was handed to the Examiner.)

Mr. BERRY. Do you mean the newspaper is opposed to the radio station?

Mr. ROLLO. Yes; and apparently the family that owns the radio station.

The EXAMINER. You may proceed.

Mr. ROLLO. I offer these papers in evidence as WKBB Exhibits No. 2 and 3, it having heretofore been marked for identification.

The EXAMINER. WKBB Exhibits No. 2 and 3 are admitted in evidence.

98 (The papers referred to were received in evidence and marked, "WKBB Exhibits 2 & 3, Docket 3967," and are filed with the transcript in possession of the Commission.)

Mr. LOVETT. What is the purpose of that exhibit; to show the attitude toward the radio station?

Mr. ROLLO. To show the liquor ad.

Mr. BERRY. Let me get this straight, Mr. Examiner, because we will have to pass on this evidence at one time or another. As I understand, the Commission has no power whatever to pass on liquor advertisements in a newspaper because it has no jurisdiction over a newspaper, but I understand these newspapers are

offered on the theory the witness has testified the same policy would be pursued by the radio station that has been pursued by the newspaper. Is that correct?

Mr. ROLLO. That, together with the fact it shows the type of applicants in this application.

Mr. BERRY. For the purpose of information, why did you confine the exhibits simply to the advertisement of liquor; why did you not offer the newspaper for whatever it contains?

Mr. ROLLO. I thought they had been admitted with that understanding, and in view of what you have stated, I offer the whole newspaper.

Mr. BERRY. That is all right then, I have no objection if you offer the whole newspaper.

Mr. ROLLO. There seems to be a little misunderstanding of the last newspaper containing the story of the extortion plot. Just before we identified the story, the witness identified a liquor advertisement shown in the paper.

Mr. LOVETT. And all of these are introduced as a matter of argument later on, of what they show.

Mr. ROLLO. If the Examiner please, as counsel for WKBB I want to take the position firmly that these exhibits that have just been admitted are offered for more than just to show the fact that liquor advertising has been carried.

I think it is a very important point for the Commission to have in mind in considering the qualifications of this applicant for a radio station license. We know that the Court of Appeals has told us that one of the guides in determining a licensee shall be by their fruits.

99 I would like to ask the Examiner to take judicial notice of the Iowa State Liquor Board law, and particularly paragraph 40 thereof, and we will supply a copy of that for you.

The EXAMINER. You will offer that now?

Mr. ROLLO. I now offer for the convenience of the Examiner a copy of the law referred to, but do not offer it as an exhibit.

The EXAMINER. All right, proceed to something else.

By Mr. ROLLO:

Q. Mr. Arndt, you participated in the hearing as a witness did you not, on the application of WKBB to move from Joliet to East Dubuque, which was held back beginning July 14, 1932, here in Washington?—A. Yes, sir.

Mr. Rollo: I ask the Examiner to take judicial notice of the record in that case, which was Docket No. 1693, Federal Radio Commission, in view of the fact that the position was then taken by this present applicant, as is clearly indicated by the evidence

in that case, that the city of Dubuque was not sufficiently large to support more than one radio station.

The EXAMINER. Is that the case that went to the Court of Appeals? Mr. ROLLO. That is correct.

The EXAMINER. In which they were not an applicant, and the court held they were not a party in interest within the meaning of the statute.

Mr. ROLLO. That is correct.

Mr. LOVETT. I presume if you take judicial notice of this record it is for all purposes, and I can refer to it as well as the intervener.

The EXAMINER. That is correct.

By Mr. ROLLO:

Q. Mr. Arndt, is it not correct that shortly after the merger of the Telegraph-Herald and the Times-Journal the advertising rates of the newspaper were raised?—A. Commensurate to the additional circulation that was brought about by the consolidated papers, and based on the mil line ratio.

Q. Is it not also correct that shortly after the advent of WKBB in the community you proposed a special local rate to your advertisers if the radio were not used?—A. No, I do not know of any such arrangement.

100 Q. Do you recall an arrangement in your local rate by which you offered a substantial reduction at that time when WKBB came in, to your advertisers if they would increase their advertising for the coming year over that of the previous year?

Mr. LOVETT. I object to that as entirely immaterial.

The EXAMINER. Objection overruled.

The WITNESS. That discount was not prompted in any sense of the word by reason of WKBB locating in Dubuque. It was merely a depression measure. You realize at that time business was on the downgrade.

By Mr. ROLLO:

Q. But it so happened that this move was taken at about the same time WKBB moved in?—A. We allowed discounts on all agreements with advertisers based on the lineage.

Mr. ROLLO. That is all I have at this time.

The EXAMINER. Is there any further cross-examination?

Mr. LOHNES. Mr. Examiner, since these papers are being introduced, I think it would be quite helpful and pertinent if we should have the papers for the last ten days. As the witness has already volunteered to supply some papers, I think that would go a long way toward trying to determine the advertising policies of the paper, since the witness has testified that the

policies of the radio station will be under the control of the same board of directors that controls the newspaper, and I would like to have the witness exhibit those papers.

The EXAMINER. I think that would be perfectly proper. I assume you are willing to supply copies of each of your daily issues for the last ten issues preceding this date?

The WITNESS. I will be glad to, Mr. Examiner.

The EXAMINER. You may cross-examine, now.

Cross-examination by Mr. LOHNES:

Q. What is the population of Dubuque?—A. The city of Dubuque, 41,678.

Q. What is the population of East Dubuque?—A. 1,395, or approximately 1,400.

101 Q. Just where is East Dubuque located with respect to Dubuque?—A. Across the Mississippi River, in Illinois.

Q. It is immediately across?

Q. *It is immediately across?*—A. Immediately across.

Q. So that only the Mississippi River divides the two communities?—A. That is correct.

Q. You testified you had 14,000 circulation in the county and 10,000 circulation in the city, but I did not understand whether you meant by that you had 24,000 circulation in the county including the city, or 14,000 in the county including the city. What is it?—A. A total of 14,000 in the county of Dubuque.

Q. That includes the 10,000 you said you had in the city?—A. That is correct.

Q. You are the only daily newspaper in Dubuque outside of this Catholic daily?—A. There is the Catholic Daily Tribune.

Q. Is that the only other daily newspaper?—A. Yes.

Q. What is its circulation?—A. The last figures I saw were in the neighborhood of I think 18,000 or 20,000.

Q. 18,000 or 20,000?—A. Yes.

Q. Is it a national paper or just a local paper?—A. The bulk of this circulation is in the local area, but it also has a national distribution outside of that particular area.

Q. Does that paper have a radio station?—A. No, sir.

Q. You have referred to the fact you had conducted a survey, and had contacted a number of advertisers, and some of those advertisers used the radio; what station did they use, do you know?—A. Some used WKBB, and in one particular instance, I think WMT; that was just one particular broadcast.

Q. The others all used the local station, that used the radio at all?—A. Yes.

Q. These two days you listened to the radio, hour after hour, did you hear any local commercials over the station?—A. Local commercials, yes. I take it you mean the sponsored programs.

Q. Yes, a sponsored program or announcement.—A. Or transcription, yes.

Q. And those were from Dubuque advertisers?—A. Not all.

102 Q. But some?—A. Some, yes.

Q. In reading over the depositions I notice a statement by a witness in there that the representative of your paper told them that immediately after the granting of this application for daytime purposes, you were going to file an application for nighttime. What have you to say about those statements of these other witnesses?—A. We are not interested in nighttime operation. What the future may hold I cannot testify to that now.

Q. Do you have any intention of immediately applying for nighttime operation if this application is granted?—A. Positively not.

Mr. LOHNES. That is all I have to ask.

The EXAMINER. Let the record show a recess is taken until ten o'clock tomorrow morning.

(Whereupon at 4:00 o'clock p. m., a recess was taken until 10:00 o'clock a. m., Tuesday, September 15th, 1936.)

PROCEEDINGS

The EXAMINER. The hearing will be resumed in Docket 3967, the Telegraph-Herald of Dubuque, Iowa, and Docket 4031, Sanders Bros.

Mr. LOVETT. Mr. Arndt is still on the stand, I believe.

The EXAMINER. Yes, that is correct. He may resume the stand.

Mr. ROLLO. I have one or two further questions of Mr. Arndt that I would like to ask.

Whereupon WILLIAM J. ARNDT resumed the stand and testified as follows:

Cross examination (continued) by Mr. Rollo:

Q. Mr. Arndt, referring again to the some 260 odd active advertisers you mentioned in your testimony—— A. (Interposing) It was 231.

Q. Did I understand you to testify that those active advertisers are active advertisers in your newspaper?—A. No, they are active in various media of advertising in the city of Dubuque.

103 Q. From what source did you obtain the total number?—A. We keep an accurate record as to the advertisers that might advertise in our daily or any other medium of advertising. That information is gathered by our advertising staff, naturally.

Q. Would the 231 include Eddy's of East Dubuque, that has an ad in your newspaper?—A. We solicit very little advertising in East Dubuque by reason of the small population of 1,395. There might not be over three accounts.

Q. Just answer my question, would Eddy's of East Dubuque be included in the number of active advertisers you testified to?—A. Certainly.

Q. What is Eddy's; do you know?—A. Eddy's is, I think, a saloon for the sale of liquor in East Dubuque, Illinois.

Q. Is it just a small organization?—A. Yes, it is.

Q. Would the Turf of East Dubuque be included in that number?—A. I don't know.

Q. If that organization advertises in your newspaper it would be, would it not?—A. I don't know.

Q. In other words, it would be classified as an active advertiser by you in the advertising media of Dubuque?—A. I don't know that specifically.

Q. Would the Circle Bar of East Dubuque be included?—A. Yes.

Q. What is that?—That is of a similar nature.

Q. Would Petries of East Dubuque be included?—A. Yes.

Q. What is that?—A. Of similar nature.

Q. Would the Sandwich Inn of 18th and Central Avenue be included?—A. Yes.

Q. What is that?—A. Of a similar nature.

Q. Would the Evergreen Gardens of Asbury, Iowa, be included?—A. No, they are not included in that list.

Q. Would the Buelow Silver Palace be included, at the corner of Rockdale and Greenview?—A. As an advertiser, yes.

Q. In other words, that 231 active advertisers list comprises a large number of small saloons, sandwich shops, and so forth?—A. If you pardon me, I wish to correct your understanding there. I stated that there were a total of 350 advertising accounts in the city of Dubuque.

Q. How does that 350 differ from the 230 you mentioned this morning?—A. There is always a possibility of developing
104 a potential advertiser, and for that reason we maintain an adequate staff?

Q. The 350 would certainly include a great number of these small organizations I have enumerated this morning.—A. Those organizations would not possibly aggregate more than ten at the outside.

Q. But you have included them in arriving at this total number of 350?—A. That is right.

Mr. ROLLO. Did the list of 60 advertisers contacted get into the record, Mr. Lovett?

Mr. LOVETT. I do not think it did.

Mr. ROLLO. Do you propose to offer the list in evidence?

Mr. LOVETT. It is perfectly all right with me, Mr. Rollo, but I don't think it was offered in evidence.

Mr. ROLLO. That is all I have of this witness.

The EXAMINER. Is there any further cross-examination?

Mr. BERRY. I have a few questions.

Cross-examination by Mr. BERRY:

Q. I understand there are two daily newspapers in your city, is that correct?—A. That is correct.

Q. Do you know, and can you state approximately, the annual advertising bill for that city in inches or in lines, whichever way you get your report, as to the amount of advertising?—A. Yes, as it pertains to our daily.

Q. Can you state approximately as to the other? I want to get the total amount as best I can, if you happen to know?—A. No, I don't know.

Q. Would you give that to me as to your own newspaper then?—A. You want the lineage figures for any definite period?

Q. I want to get the annual advertising cost as carried in your newspaper. You can give it to me either in lines or inches, and if you cannot give it exactly, give it approximately.—A. The 1935 figures, which include all classifications of advertising, and by that I mean national, local, classified, legal, and so on, was in excess of five million lines. I think the exact figure is 5,542,000 or in that neighborhood of lines of advertising.

105 Q. Is there any way you could give me an estimate by excluding legal advertising, as legal advertisements are not prospective radio advertisers?—A. No; they are not.

Q. Now, could you give me your estimate of the prospective commercial advertisements?—A. That would be in the neighborhood of five million lines.

Q. What would be the approximate gross income be from that?—A. Based on our mit line rates that would be approximately $400,000, which is the gross.

Q. If you have made any survey, what in your judgment would be the amount that the radio station would absorb or take over from that newspaper, if any; would there be such a conflict between those media as to take any of that advertising from the newspaper?—A. No, sir.

Q. The station that is located just across the river, is there any perceptible competition between the advertising you carry in your paper and the advertising they carry?—A. I would not think so.

Q. Do they solicit local advertising in your city?—A. Yes.

Q. Does your newspaper carry any of the announcements as to the local religious and civic matters that are activities of the city.

other than the announcement of church services?—A. Yes, all civic and church matters, whatever is desired by those organizations is carried in the columns of our paper free of charge.

Q. Do you have a portion or column of your paper devoted to the advancement of local religious and civic affairs; that is, do you have any part of your paper that is devoted to that exclusively?—A. Yes; to a certain extent. We frequently publish a feature, I think the caption of which is "The Sunday School," which frequently appears on our editorial page, and the various editions of the paper will show the news of general interest to these organizations, although it may not be classified as a definite feature.

Q. You say that is headed, "The Sunday School," is that international Sunday school lessons that is carried, is that what you mean?—A. It is a feature that is published as one of our features. It might be localized to a certain extent by the Ministerial Association or the Catholic clergy in Dubuque. However, that is not a daily feature.

106 Q. As to agriculture, I believe you testified the country adjacent to the city was devoted largely to agricultural affairs and dairy farming, is that correct?—A. Dairying, cheese, butter and eggs, and farming.

Q. Does your paper carry any special features with respect to agricultural interests, and if so, what is the nature of it, and what part of the paper do you carry that in?—A. We carry agricultural news naturally by reason of the agricultural area we serve. The county agents supply the data as well as certain news stories that are gathered by our country correspondents in their contacts with the individual farmer.

Q. Does that come to you in the nature of correspondence, and you have your representatives send in various statements from the various parts of the country that your paper covers, and that is put in the form of correspondence, or how do you carry that?—A. Some of it comes in that way and some of it is brought in direct by the various associations, and frequently by the farmer himself.

We endeavor through our sales force in the circulation to develop that angle to give as much agricultural news as possible, consistent with the particular territory we serve.

Q. Does this radio station that is already operating there, what does it carry in the nature of farm news, does it have an agricultural program?—A. I think they have.

Q. What is the difference, if any, between the programs they carry and the programs you carry in the newspaper, just give me a general idea?—A. I don't know to what extent the station exploits the agricultural side of it other than the fifteen minute broadcast.

Q. What would be your policy with reference to agriculture: you discussed that some, but what would be your general fixed policy with reference to carrying agricultural programs and agricultural matters for the benefit of the rural section of your side of the river?—A. The six counties, including Dubuque County, will give us their cooperation in producing matters of an agricultural nature, especially designed for their particular needs.

Despite the fact that the county agent at Lancaster would have his program on the air once a week, it would not necessarily
167 mean that the other five counties would be interested. Certain departments of agriculture for Grant County might not have a direct bearing on the other counties.

Q. The character of the country and the farming interests I assume in those five counties you refer to are similar?—A. Not in all respects. Some of the counties differ. For instance, I have in mind Grant County, Wisconsin, the cheese industry is predominant in that county, whereas in Clayton County it would be possibly dairying, and a part of Dubuque County and a part of Delaware County would be live stock.

Q. What area are you embracing in the territory you are now discussing; how much territory are you taking in miles?—A. It is our hope to be able to serve a 40- to 50-mile area from Dubuque, a radius of from 40 to 50 miles.

Mr. BERRY. I think that is all.

Mr. LOVETT. I have a few more questions.

The EXAMINER. All right, you may proceed.

Redirect examination by Mr. LOVETT:

Q. Mr. Arndt, can you give us any idea as to the annual farm revenue from the efforts of this particular area?—A. The proposed service area of the station?

Q. Yes.—A. According to the 1930 Census, which is revised in 1933 on the market survey, the farm area will produce in excess of $95,000,000. That is the revenue that accrues to the farmers from the sale of their products.

Q. Mr. Berry mentioned the farm programs which you were going to carry; are there any other daily programs suggested by you in addition to the 30-minute noon period you mentioned yesterday as being a daily feature, one day each week, devoted to each of the six counties?—A. Yes, indeed; there a number of programs that are especially designed for the benefit of the farmer.

I have a break down of the percentages, and I believe I testified yesterday as to the number of hours we will devote to farm programs. If you want the amount I will give it to you again.

Q. That includes local and general market reports?—A. No; it does not. I classified our market reports and market reviews as a news broadcast, of which a great percentage could be attributed to the interests of the farmer primarily.

108 Q. You have listed a local market review at 9:30 to 9:45 in the morning; what is that?—A. The local market review is to acquaint the farmers with the prices paid for produce. In the city of Dubuque we have buyers of livestock, buyers of butter and eggs; we have a large city market; I mean a city market where the farmers come into the city, park their trucks and their wagons at the city market, and they sell the products of their farms to the consumers direct, and the farmer is interested in that type of information so that when he markets his stuff at eleven o'clock in the morning and on Saturdays as early as nine o'clock, or possibly earlier, he wants to know what the prevailing market price is in Dubuque so that he can gauge his price accordingly.

Q. Is that information available to him elsewhere at the present time?—A. Not to my knowledge.

Q. Do you know what the total bank deposits are in the city of Dubuque?—A. As of June 1st, 1936, it was in excess of $10,000,000.

Q. Yesterday you referred to a list of actual contacts you had made of business firms in the city of Dubuque. I show you these lists which are marked for identification as Applicant's Exhibit No. 6, and ask if those are the lists to which you referred?—A. Yes; this is the list of actual contacts.

Q. You prepared that list yourself?—A. I did.

Q. And it is a correct list?—A. It is.

The EXAMINER. What is that list of?

By Mr. LOVETT:

Q. You might explain again what it is.—A. This is a list of factual contacts I personally made of advertisers in Dubuque among the 231 active accounts.

Q. Are these business houses there listed now using the radio as an advertising medium?—A. No.

The EXAMINER. You mean none of them are using the radio at the present time?

The WITNESS. No; they are not.

Mr. LOVETT. I offer this list in evidence as Applicant's Exhibit No. 6.

The EXAMINER. Applicant's Exhibit No. 6 will be admitted in evidence.

109 (The lists referred to were received in evidence and marked, "Applicant's Exhibit No. 6, Docket 3967," and are filed with the transcript in possession of the Commission.)

By Mr. LOVETT:

Q. Mr. Arndt, yesterday, you stated that in a proceeding before the Commission in 1932, involving the removal of WKBB from Joliet, Illinois, to East Dubuque, Illinois, you testified this area in the vicinity of Dubuque had adequate radio reception. How do you reconcile that statement with your present position in applying for a permit to establish a new station to serve this area?—A. Well, in the first place that was four years ago. In the second place, my statement was based upon the service rendered by the clear channel stations which at that time, and even now possibly, are rendering a fair service.

But, in the last year it became apparent to us, and from comments and suggestions of many people, that there was a very definite need for a purely localized radio service designed especially for this area, which we hope to serve.

Q. I believe you also stated that the Telegraph-Herald had discontinued liquor advertisements several weeks ago, and it appeared that some such advertising has since been carried. How do you explain that?

Mr. ROLLO. I object to that, if your Honor please, as immaterial.

The EXAMINER. Objection sustained, you are cross-examining your own witness.

Mr. LOVETT. I am merely asking him for an explanation of his testimony brought out on cross-examination.

The EXAMINER. I think it was a proper procedure to establish this fact.

By Mr. LOVETT:

Q. Why did the Telegraph-Herald decide to discontinue liquor advertising?—A. Upon my recommendation.

Q. On what was your recommendation based?—A. My recommendation was based on the fact that inasmuch as there was some question as to the propriety of this type of advertising from the Liquor Control Commission we discontinued this type of advertising in view of those existing circumstances.

110 Incidentally, I have attended many meetings in Des Moines of the Liquor Control Commission in which this matter was discussed at great length.

The EXAMINER. You mean the propriety of carrying liquor advertisements?

The WITNESS. That is right.

The EXAMINER. That is, in newspapers you mean?

The WITNESS. In the newspapers, yes.

By Mr. LOVETT:

Q. You say the Telegraph-Herald decided to discontinue several weeks ago, what do you mean by "discontinue?"—A. Well,

liquor advertising has been discontinued, but certain existing and outstanding contracts had to be considered by reason of certain provisions of the advertising contracts.

Q. As these existing contracts expire will they be renewed?—A. Absolutely they will not be renewed.

Q. Do you intend to carry liquor advertising over the proposed station?—A. Positively not.

Q. There was also some discussion yesterday about your plans for conducting the church calendar which you schedule for five minutes each Sunday morning. Will you please state just how you intend to conduct that program?—A. Dubuque has 29 churches. I know from my own experience with the newspaper that a number of these churches will not submit their copy, and for that reason I was of the opinion that five minutes would be adequate. However, if that is not the case I will allot ten minutes or something additional, as many additional minutes as necessary.

Q. There was also considerable discussion yesterday about the remote lines which were mentioned in the depositions. Entirely apart from the four permanent remote lines which you list in your schedule of construction and operating costs, will you state whether or not you plan to carry out these plans mentioned by the various organizations and individuals appearing in the depositions?—A. Yes; in a great many cases we will be permitted to use short wave equipment, and we have set aside a certain amount in our estimated costs to take care of short wave equipment.

I have in mind, as I stated yesterday, the corn husking contest, and farm gatherings, like one where a very inter-
111 esting feature would be an auction sale, fairs and draft horse shows.

At a number of those places we will not have the telephone lines, so naturally we will resort to short wave, and we will get permission to use short wave for those occasions.

Q. You mentioned auction sales, will you explain that, do you mean bankruptcy foreclosure proceedings or what do you refer to?—A. No; an auction sale is where a farmer decides to discontinue the business of farming, and he sells his buildings, property, farm products, and even a lot of personal effects. That sale is held by an auctioneer, which the title itself defines, of course, and he gives a lot of ballyhoo to get the maximum for the farmer, and it is very interesting to listen to; I have had that experience myself.

Q. Are these sales quite widely attended?—A. Yes; very widely attended. The farmers of a wide area attend these auction sales, not merely from the standpoint of necessarily buying anything, but from the standpoint of the novelty.

Mr. LOVETT. That is all.

Mr. ROLLO. I have a few more question to ask if I may?

The Examiner. Yes; you may.

Recross-examination by Mr. ROLLO:

Q. Your estimate of $400,000 as the gross income for five million lines of advertising includes both national and local advertising, does it?—A. Yes.

Q. Can you break that down into local and national?—A. I am sorry I haven't those figures.

Q. Can you give us an approximate estimate?—A. No; I would not know. We are interested in the gross sale of our total lineage for a stipulated period.

Q. You are sufficiently familiar with the operation of the paper to give us a rough estimate, are you not, of the percentage of local and national advertising carried?—A. I am afraid I am not.

Q. You have no idea of that?—A. No, sir.

Q. What counties do you include in arriving at the total of $95,000,000 as the total agricultural revenues?—A. The six counties in this proposed radio area.

112 Q. You are not carrying the market reports in your newspaper you propose to broadcast, are you?—A. Just what do you mean, what market reports?

Q. The local market reports of Dubuque that you propose to broadcast as you have described?—A. Only sporadically. I might amplify that by stating our paper delivered to the farmers does not reach him maybe until eleven o'clock, and in some instances it is later than that on account of the rural route service.

Q. What would be the maximum distance you would expect to serve with your short-wave equipment; did I understand you correctly that you expect to use short wave in some of these instances described in your depositions; that is the program from the county agent and the schools in the counties?—A. Yes.

Q. You mentioned the circulation yesterday of the other daily newspaper, I think about 19,000 or 20,000, was that correct?—A. That was an estimate.

Q. What would be your estimate of their city circulation and their Dubuque County circulation?—A. I don't know, those records are not available to me.

Q. It is a very small proportion of the 20,000, isn't it?—A. No; I do not think so.

Mr. ROLLO. If the Examiner please, yesterday I asked you to take judicial notice of the testimony of this witness.

The EXAMINER. I remember you making the statement, but that is not the proper way to get that matter into the record.

Mr. ROLLO. I think the proper way would be to read this testimony into the record.

The EXAMINER. You would have to lay a foundation for the contradiction of the witness in order to get that into the record, and that you have not done.

You could point out to the witness the specific questions and answers that he made in the previous record, and ask him whether or not that is correct, whether his testimony coincides with that or not.

If you want to take time to look that record over, we can recall the witness at a later time for further cross-examination, and save some time perhaps.

Mr. ROLLO. Then that is all I have for the present.

113 Mr. BERRY. I have one further question I would like to ask to get it straight in the record.

The EXAMINER. All right, proceed.

By Mr. BERRY:

Q. With reference to the question asked about your testimony four years ago, have there been any economic changes in that section of the country during the last four years, either for better or worse?—A. It is much improved from 1932, the records will show that.

Q. How would that be with reference to income from advertising, if you know, by radio, newspaper, or any other medium that you know of?—A. It would be proportionately increased.

Mr. BERRY. That is all.

The EXAMINER. Is it your contention that business conditions have improved substantially in the Dubuque area since 1932?

The WITNESS. Oh, yes, very substantially.

Mr. ROLLO. I move that that be stricken as the pure conclusion of the witness, and not based upon any facts.

The EXAMINER. I think it is competent for him to state that business conditions have improved in that community, whether prosperity is around the corner or whether we have turned the corner. That is a matter of general information, and of very great importance to the community.

The WITNESS. The simple fact that the market to the farmer has been greatly increased over 1932 on every product he has to sell from his garden truck to live stock shows that there is a better market prevailing today, and I know that of my own knowledge.

The EXAMINER. Do you know what corn was selling for in that territory in 1932?

The WITNESS. It was less than 40 cents because corn right after that was pegged for the price of 40 cents, that is, shortly after 1932, and corn today is selling for over a dollar a bushel.

Hogs are selling for $18.00 per hundred weight.

The EXAMINER. What were they selling for in 1932 or 1933?

The WITNESS. From two to three dollars.

114 The EXAMINER. Of course, that is not primarily a wheat country, but you raise some wheat there, no large quantities.

The WITNESS. Some, yes; but that is not one of the principal products. However, oats and barley are.

The WITNESS. What was the variation in the price of oats as compared with what it is now?

The WITNESS. Comparatively to the same amount based on the sale of that product. Oats sold for as low as 20 cents a bushel, and the market today, if I am not mistaken, is in the neighborhood of from 70 cents to 80 cents a bushel.

The EXAMINER. What about hay?

The WITNESS. The same condition. Hay sold then very cheaply, five to seven dollars a ton, and today alfalfa hay, clover, and all legume hay is $18 a ton.

Live stock, and I am speaking of shipper cattle, sold as low as 4 cents, possibly lower, and today the price is almost double that amount.

The EXAMINER. What do they attribute these increased prices to?

The WITNESS. To a generally improved economic condition.

The EXAMINER. All right, the witness will stand aside for the present. Call your next witness.

Mr. LOVETT. At this point, Mr. Examiner, I offer in evidence depositions which were taken by the applicant in support of its application in Dubuque on August 21, 1936, pursuant to an Order of the Commission dated August 10, 1936.

The EXAMINER. When were they filed?

Mr. LOVETT. They were received by the Commission on September 6, 1936.

The EXAMINER. Let the depositions taken pursuant to the order of the Commission in this case be filed and made a part of the record in the case, subject to the usual objections as to the competency of the testimony.

(Depositions of the following witnesses were received in evidence: Hermith S. Huehn; Floyd E. Pratt; John W. Giellis; Ben H. Walker; Frank E. Ralph; F. L. Burns; Charles F. Martin; Mary A. Meyer; Dale D. Welch; Frank R. Kerrigan; Msgr. J. M. Wolfe; Sister Mary Carlos; Earl D. Cline; Prof. A.
115 C. Kleine; Prof. Edward J. Schroeder; Joseph P. Flynn; Doris McCaffrey; Dr. W. J. Connell; Rev. Hugh D. Atchison; Roy Combs; L. Walter Dick; Thomas J. Ryder; Msgr. Thomas Conry; H. R. Brunnemeyer; Dr. Emil H. Raush.)

Mr. LOVETT. I will call Mr. Burch.

Whereupon JOSEPH A. BURCH was called as a witness on behalf of the Applicant, and having been duly sworn, was examined and testified as follows:

Direct examination by Mr. LOVETT:

Q. Will you state your name, residence, and occupation?—A. Joseph A. Burch, 7 West 8th Street, New York City, measurement engineer.

Q. State whether or not you made certain field intensity measurements for the Telegraph-Herald at Dubuque, Iowa, to determine the intensity rendered at various times in or near the city of Dubuque of certain radio stations?—A. I did.

The EXAMINER. Have you qualified this gentleman as an expert engineer?

Mr. LOVETT. We are not calling him as an expert engineer, Mr. Examiner.

The EXAMINER. All right, proceed.

By Mr. LOVETT:

Q. Will you describe what equipment you used in making the field intensity measurements?—A. I used a type 403 General Radio signal generator together with a Silver Marshall superheterodyne receiver equipped with vacuum tube volt meter, the entire apparatus being mounted in a Ford truck and used with loops of various sizes.

Q. Will you state by whom your equipment was calibrated, giving the date and the accuracy of the equipment?—A. The equipment was calibrated on April 18th by the Physics Laboratory of the University of Texas, and on September 1st by the Collins Radio Company of Cedar Rapids, Iowa, and the accuracy of the equipment was within 10 per cent.

Q. Will you state what, if any, experience you have had before in making measurements?—A. During the past ten
116 years I have made numerous field intensity measurements for various stations throughout the United States.

Q. Will you explain what measurements were made in this case, giving the location and the dates on which the measurements were made?—A. Measurements were made at a point 40 miles east of Dubuque, 20 miles east of Dubuque, at the east city limits of the city of Dubuque, and the approximate center of the city of Dubuque, the west city limits of the city of Dubuque, 20 miles west of Dubuque and 40 miles west of Dubuque, all distances air line.

Q. Will you state whether or not you have tabulated the results of your investigation?—A. I have.

Q. Will you state whether or not this is such tabulation?—A. It is.

Q. Did you prepare this tabulation from your measurements and field notes?—A. I did.

Q. Is it correct?—A. Yes.

Mr. LOVETT. If the Examiner please, I wish to have this tabulation identified by the witness, marked Applicant's Exhibit No. 7, and I offer it evidence as such.

The EXAMINER. You may have it marked for identification.

(The tabulation referred to was marked "Applicant's Exhibit No. 7, Docket 3967," for identification.)

Mr. ROLLO. I have no objections to this.

The EXAMINER. Applicant's Exhibit No. 7 will be admitted in evidence.

(The tabulation was received in evidence an dmarked, "Applicant's Exhibit No. 7, Docket 3967," and is filed with the transcript in possession of the Commission.)

Mr. ROLLO. May I ask, at what time of day were the measurements made?

The EXAMINER. I think he testified as to the dates of the measurements, did you not?

The WITNESS. No; I did not, but it is shown on the exhibit.

Mr. LOVETT. I ask to have these maps marked respectively Applicant's Exhibits 7–A and 7–B for identification.

(The maps referred to were marked "Applicant's Exhibits 7–A and 7–B, Docket 3967," for identification.)

117 By Mr. LOVETT:

Q. Mr. Burch, I hand you a map which has been marked for identification Applicant's Exhibit 7–A, and ask what it represents?—A. This map represents the locations in the city of Dubuque where measurements were made of the various stations on the accompanying sheet.

Q. And which sheet has been offered in evidence as Applicant's Exhibit No. 7?—A. Yes.

Q. You prepared this map yourself?—A. Yes.

Q. It is correct?—A. Yes; it is correct.

Mr. LOVETT. I offer this map in evidence as Applicant's Exhibit 7–A.

The EXAMINER. Is there any objection to Applicant's Exhibit 7–A?

Mr. ROLLO. No objection.

Mr. JOHNSTON. No objection.

The EXAMINER. Applicant's Exhibit 7–A is admitted in evidence.

(The map referred to was received in evidence and marked, "Applicant's Exhibit 7–A, Docket 3967," and is filed with the transcript in possession of the Commission.)

By Mr. LOVETT:

Q. Mr. Burch, I now hand you a map which has been marked for identification as Applicant's Exhibit 7-B, and ask you to explain what that represents?—A. It is a map representing the points at which measurements were made 20 miles east, 40 miles east, 20 miles west and 40 miles west of the city of Dubuque.

Q. Was this prepared from notes which you tabulated on Exhibit No. 7?—A. Yes.

Q. It is correct?—A. It is correct.

Mr. LOVETT. I offer this in evidence as Applicant's Exhibit 7-B.

The EXAMINER. Applicant's Exhibit 7-B will be admitted in evidence.

(The map referred to was received in evidence and marked, "Applicant's Exhibit 7-B, Docket 3967," and is filed with the transcript in possession of the Commission.)

118 By Mr. LOVETT:

Q. In making these measurements, Mr. Burch, did you use the field intensity of all stations of 100 microvolts per meter or greater?—A. I did.

Q. Did your also attempt to measure the field intensity of any stations on 1340 kilocycles at each of the locations?—A. I did.

Q. What were the results?—A. No signal heard on 1340 kilocycles.

Q. What is the lowest signal your equipment will record?—A. Approximately 20 or 25 microvolts.

Mr. LOVETT. That is all for this witness.

The EXAMINER. You may cross-examine.

Cross-examination by Mr. ROLLO:

Q. Mr. Burch, you stated you attempted to measure the signal on 1340 kilocycles at each of these locations?—A. Yes.

Q. At what time of day?—A. All times of day, and no measurements were made before 7:00 a. m. or after 7:00 p. m.

Q. At 40 miles west of Dubuque, at that particular point, at what times of the day did you attempt to get a signal on 1340?—A. Between one and two in the afternoon.

Q. That is the only time at that location?—A. Yes.

Q. At the point 20 miles west of Dubuque, what time was it?—A. Between 9:00 a. m. and 10:00 a. m.

Q. And that is the only time you attempted that?—A. Yes.

Q. At the west city limits of Dubuque, at what time was that attempt made?—A. Between 6:15 and 7:00 p. m.

Q. What were your results at that time?—A. None. I could not hear any signal on 1340.

Q. At the center of the city of Dubuque, what time was it?—A. Just a moment now, I gave you that time at the west city

limits of Dubuque between six and seven p. m., you asked for the east, didn't you?

Q. I asked for the west city limits?—A. That was between 6:15 and 7:00 p. m.

Q. And you got no signal?—A. No signal.

Q. What time was it at the center of the city of Dubuque?—A. Between five and six p. m.

119 Q. You got no signal there?—A. No signal there.

Q. What time was it at the east city limits?—A. Between 5:15 and 4:30 p. m.

Q. Did you get any signal?—A. No signal.

Q. At the point 20 miles east of Dubuque, what time was it?—A. Between 1:15 and 2:35 p. m.

Q. Did you get any signal?—A. No signal.

Q. At the point 40 miles east of Dubuque, what time was it?—A. Between 10:05 a. m. and 11:20 a. m., with no signal.

Q. Have you checked your list of measurements for typographical errors?—A. Yes. We found one typographical error, which has been corrected, and I do not think there are any further such errors in it.

Mr. Rollo. That is all.

The Examiner. Is there any further cross-examination?

Mr. Johnston. I have no questions.

The Examiner. Have you any questions, Mr. Berry?

Mr. Berry. I have no questions.

The Examiner. The witness will stand aside. Call your next witness.

Mr. Lovett. I will call Mr. Barron.

Whereupon John H. Barron was called as a witness on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lovett:

Q. Please state your name, residence, and occupation.—A. John H. Barron. My residence is Chevy Chase, Maryland; occupation, consulting radio engineer with offices in the Earle Building, Washington.

The Examiner. Will his qualifications as an expert engineer be waived?

Mr. Berry. We will waive that; yes.

Mr. Rollo. We concede his qualifications.

The Examiner. Let the record show that the qualifications of Mr. Barron as an expert radio engineer are conceded by all parties interested.

120 By Mr. LOVETT:

Q. Will you state whether or not you have been retained by the Telegraph-Herald as a consulting radio engineer for the purpose of handling the engineering problems involved in the application now being heard?—A. I have.

Q. What is the assignment sought by the applicant?—A. The applicant seeks a construction permit for authority to operate on the regional channel 1340 kilocycles with power of 500 watts and daytime hours of operation.

Q. State what equipment is to be installed and where it is to be located.—A. If this assignment is granted by the Commission it is proposed to install a Collins 20–A 500-watt transmitter. This will be of the latest type being sold by the Collins Company, and which is designed and built in accordance with modern engineering standards as to the requirements for high-fidelity transmission, minimized distortion, audio frequency characteristics, harmonics, safety features, and all other engineering phases. An approved type of frequency monitor and an approved modulation indicator will also be installed.

The antenna which is proposed to be installed is a vertical radiator, one-fourth of a wave length high, which will be 185 feet.

An efficient ground system is to be installed. This will be a network of copper wires consisting of not less than 120 radials, extending outward from the base of the radiator for a distance of at least 185 feet.

These radials will be spaced three degrees apart. They will be buried in the ground about six inches below the surface.

I made a personal visit to Dubuque, and after special study of the lay-out of the city, topography, available ground and the proposed assignment, I selected a proposed transmitter site which is about three miles northwest from the center of Dubuque, near Gardners Lane, northeast of Highway 52.

In the event the construction permit is granted, a further investigation of this site will be made in order to be absolutely certain that it is the most desirable from the standpoint of obtaining efficient transmission.

121 This location which has been selected, however, appears to be a good one as it is in bottom land which is quite marshy, flat, and fertile.

Q. I will ask you to state whether or not your services have been retained by the Telegraph-Herald to supervise the construction of this station if the permit is granted?—A. Yes; such an arrangement has been made.

Q. What if any stations are now licensed for operation on 1340 kilocycles or adjacent frequencies which might involve the problem of interference?—A. According to the latest published tables of recommended separations, the average distance recommended for the simultaneous daytime operation of two stations on the same regional frequency, one of which has power of 500 watts and the other 500 watts or less, in 260 miles.

The recommendation for daytime operation is 300 miles for 1 kilowatt and 400 miles for 5 kilowatts.

The nearest station to Dubuque, Iowa, which now operates on 1340 kilocycles is Station WSPD, Toledo, Ohio, with assigned power of 5 kilowatts during daytime. The distance from Dubuque to Toledo is 368 miles, which is well in excess of the 260 miles required for operation with power of 500 watts.

It is therefore apparent that the Dubuque station will not cause interference within the service area of Station WSPD, which is to be protected as determined by the published standards, which in the case of regional stations, is the 0.5 millivolt per meter contour, and that interference is not considered objectionable, which is caused less than 10 percent of the time.

There are no other stations located at distances less than the separations required, either on 1340 kilocycles or on any adjacent frequency.

Mr. LOVETT. I ask that this map be marked for identification as Applicant's Exhibit No. 8.

(The document referred to was marked "Applicant's Exhibit No. 8, Docket 3967, for Identification.")

By Mr. LOVETT:

Q. Mr. Barron, I hand you a document which has been marked Applicant's Exhibit No. 8 for Identification, and ask you
122 to explain what it represents.—A. This exhibit shows the location of the 10, the 2, and the .5 and the .25 and the .1 millivolt per meter contours of the proposed station.

This is based upon the conductivity determined from the measurements made by Mr. Burch of Station WKBB located in East Dubuque, Illinois. I calculated the conductivity based upon these measurements both in the easterly and the westerly directions to be expected, as very nearly one times 10 to the minus 13th emu.

Q. You say the calculations are based upon the measurements taken by Mr. Burch which have been offered in evidence in this proceeding?—A. Yes; they were.

Q. You prepared this map yourself?—A. I did.

Q. It is accurate?—A. It is.

Mr. LOVETT. I offer in evidence at this time Applicant's Exhibit No. 8, being the map identified by the witness.

The EXAMINER. Applicant's Exhibit No. 8 will be admitted in evidence.

(The document referred to was received in evidence and marked "Applicant's Exhibit No. 8, Docket No. 3967" and is filed with the transcript in possession of the Commission.)

By Mr. LOVETT:

Q. Mr. Barron, will you explain the significance of the contours which appear upon Exhibit No. 8?—A. The 10 millivolt per meter contour is the accepted standard for the minimum field intensity required to render good service in business sections of cities. The 2 millivolt per meter contour is the minimum intensity required to render good service in residential and suburban sections of cities. The 0.5 millivolt per meter contour is the intensity required to render what is specified as good service in rural areas. The 0.25 millivolt per meter contour is the standard for what is termed fair service in the rural areas, and the 0.1 millivolt per meter contour is the standard termed as poor service in rural areas.

Q. Did you hear the testimony of Mr. Arndt regarding the density of population in the area between 35 and 50 miles from Dubuque?—A. I did.

Q. In the light of his testimony, and of your calculations, what would you say concerning the acceptability of the
123 service proposed to be rendered in that area between 35 and 50 miles from Dubuque?—A. In that area the field intensity is expected to be 250 microvolts. While 500 microvolts is accepted as the standard for good service, nevertheless 250 microvolts does render an acceptable service in rural areas and cities of small size for a considerable portion of the time, and represents a type of service which is frequently used by rural listeners.

Mr. LOVETT. I ask to have this marked for identification as Applicant's Exhibit No. 9.

(The document referred to was marked "Applicant's Exhibit No. 9, Docket No. 3967, for Identification.")

By Mr. LOVETT:

Q. Mr. Barron, I hand you a paper which has been marked Applicant's Exhibit No. 9 for Identification and ask you what that shows.—A. This exhibit shows the calculated population based upon the official United States 1930 Census figures within each of the contours shown on the map, and also shows the radius in miles of these contours.

Q. Did you prepare this statement yourself?—A. I did.

Q. Is it correct?—A. It is.

Q. In accordance with the figures published by the 1930 Census?—A. It is.

Mr. LOVETT. I offer in evidence at this time this calculation as Applicant's Exhibit No. 9.

Mr. ROLLO. There is no objection.

The EXAMINER. Applicant's Exhibit No. 9 will be admitted in evidence.

(The document referred to was received in Evidence and marked Applicant's Exhibit No. 9, Docket No. 3967, and is filed with the transcript in possession of the Commission.

By Mr. LOVETT:

Q. Mr. Barron, have you analyzed the measurements made by Mr. Burch, showing the service from other stations rendered within the area which will be served by the Dubuque Telegraph-Herald?—A. I have.

Mr. LOVETT. I ask to have this marked Applicant's Exhibit No. 10 for identification.

124 (The document referred to was marked "Applicant's Exhibit No. 10, Docket No. 3967, for Identification.")

By Mr. LOVETT:

Q. I hand you a chart which has been marked Applicant's Exhibit No. 10 for Identification and ask what that represents?—A. This exhibit shows a graphic tabulation of the service available within the limits of 40 miles west of Dubuque to 40 miles east, which covers the 0.5 millivolt per meter contour which the Dubuque station will serve.

The exhibit speaks for itself, and at each point where the measurements were taken by Mr. Burch it shows the list of stations which are above the minimum standard required to render good service at that point, the first column being at the location of 40 miles west where a 0.5 millivolt per meter signal or greater is required for the best rural service, and indicating those stations which do render that type of service at that point.

For any one station to cover the same area which will be covered by the Dubuque station, it will be necessary that their call letters appear in every one of these columns, but it will be seen that the only stations which will render a field intensity of 0.5 millivolt per meter or greater, within the entire area which we will serve, are Stations WMT and WMAQ. WMT, Cedar Rapids, Iowa, does not render a field intensity of 10 millivolts per meter throughout the business section of Dubuque, which requires this intensity or more.

Station WMAQ, Chicago, Illinois, also renders a field intensity of 0.5 millivolt per meter or greater, within the area which

will be served by the Dubuque station, but WMAQ does not render good service within the city limits of Dubuque, which requires an intensity of 2 millivolts per meter or greater.

Station WKBB, East Dubuque, Illinois, is the only station which renders a field intensity of 10 millivolts per meter or greater, in the business section of Dubuque. However, Station WKBB will not cover the entire rural area which will be served by the proposed station, but only a portion thereof.

Mr. LOVETT. I offer in evidence Applicant's Exhibit No. 10 which has been marked for identification.

125 Mr. ROLLO. There is no objection.

The EXAMINER. Applicant's Exhibit No. 10 is admitted in evidence.

(The document referred to was marked "Applicant's Exhibit No. 10, Docket No. 3967," and was admitted in evidence.)

Mr. LOVETT. That will be all of this witness, Mr. Examiner.

The EXAMINER. You may cross-examine.

Cross-examination by Mr. ROLLO:

Q. Mr. Barron, referring to Applicant's Exhibit No. 7, I call your attention to the field intensity shown for WIND at a point 40 miles east of Dubuque, indicating a field intensity of 400 microvolts. That is correct, is it not?—A. That is right.

Q. I also call your attention to the measurement of WIND at 20 miles east of Dubuque at somewhat less, 318 microvolts. Is that correct?—A. That is right.

Q. Now, on the east city limits of Dubuque it shows a field intensity of 137 microvolts for WIND, does it not?—A. Yes.

Q. Does such a marked drop in field intensity occur on that frequency under the conductivity that you have assumed, in ordinary cases?—A. It is not a very marked drop between 40 and 20 miles, that seems to be a reasonable drop.

At the east city limits there is a considerable drop there, which probably is caused possibly by some local shadowing effect, I don't know, but the reason for such a decrease could be found, of course.

Q. What intensity would you expect WIND to deliver at Dubuque, Iowa, assuming the conductivity which you have assumed, and the minimum efficiency required by the Commission's standards?—A. We will say take the center of Dubuque and call it 180 miles, does that suit you all right?

Q. Yes.—A. Of course WIND uses a directional antenna and I am not certain what the radiated power is toward Dubuque.

126 Q. You are somewhat familiar with that pattern, are you not?—A. I don't know anything more about it, except I understand it to be a directional antenna. I haven't any idea of the degree.

Q. Is it your general understanding that the direction of the maximum signal is in the general direction toward Dubuque?—A. No; it is not. It is my understanding it is toward Chicago.

Q. Wouldn't that fall in the line of Dubuque, if that is correct?—A. No; I don't think it would. You cannot tell angles on this map I have, but it certainly would not be in that direct line.

Q. At any event, that would not be in the direction of the minimum suppression of that antenna?—A. I am not certain. I would not want to answer that without a map that correctly shows angles. You can very easily make a big error by using any other type of map.

Q. For the purpose of my question assume a nondirectional antenna, and give us an estimate, please?—A. It is estimated to be somewhere around three-tenths to four-tenths millivolts per meter.

Q. And what does the exhibit show as the actual measurement in the center of Dubuque?—A. Well, I do not think the center is strictly a favorable comparison there, because you know you will get shadowing effects in the center of the city.

Q. What is the measurement at any of the points in the city?—A. 137 on the east city limits.

Q. In your opinion as an expert, what time of the day, approximately, do nighttime conditions begin to appear in the summer time, say, in July?—A. That depends upon the distance from the station. If you were nearby there would not be any difference, and if you were at an extreme distance there would be a great deal of difference, and in between would be between those limits.

Q. Let us take an example, what is the distance from Toledo to Dubuque?—A. 368 miles.

Q. At a distance of 368 miles, what time of day in July would you expect nighttime conditions to become apparent?—A. Sunset would occur at around 7:45 p. m., so I would expect some slight difference to occur possibly an hour sooner, or possibly even two hours; that is, a very slight difference, an hour or two before sunset.

127 Q. It is possible that nighttime conditions begin to appear as early as two hours before sunset, in July?—A. Yes; to some slight degree.

Q. Now, take the month of December?—A. The month of December, sunset would be around 4:30 p. m., so it would occur an hour or two previous to that.

Q. You are speaking of the time at Dubuque?—A. Yes.

Q. And not at Toledo?—A. That is right.

Q. Coming back to Mr. Burch's testimony again, you heard him testify, did you not?—A. I did.

Q. With reference to the 1340 frequency?—A. Yes.

Q. That he had measured it as late as 6:15 to 7:00 o'clock in July?—A. Yes.

Q. And is it your opinion that there would be no signal measurable there from WSPD at that time?—A. Yes; that could very easily be the case.

Q. On one particular instance only, but it would not be the general condition?—A. I think it would be. It is certainly within reason that such a condition would exist.

Q. Under nighttime operating conditions what signal intensity would you expect WSPD to deliver in Dubuque?—A. What has nighttime to do with it? This is a daytime application.

Q. I am asking you the question.—A. I would object to that.

Mr. LOVETT. I see no materiality to that, Mr. Examiner.

Mr. ROLLO. Are you objecting to my question?

Mr. LOVETT. Yes; I will make that objection.

Mr. ROLLO. I think it is material in view of the testimony the witness has given that nighttime conditions begin to appear as early as two hours before sunset.

The EXAMINER. What is the objection?

Mr. LOVETT. It is on the ground that it is immaterial for the reason this application is for daytime operation.

The EXAMINER. Of course, Mr. Rollo, you understand this is a daytime application only.

Mr. ROLLO. I understand that, but the witness has testified that nighttime conditions would begin to appear as early as two hours prior to sunset at Dubuque.

The EXAMINER. Is that correct, Mr. Barron?

128 The WITNESS. That is not strictly true. I said the nighttime factor would start to be noticeable as early as two hours before sunset.

The EXAMINER. I think it would be competent then. The objection is overruled.

By Mr. ROLLO:

Q. Will you please answer the question?—A. Using the allocation curve derived from the Commission's table of recommended separations, it would be around 200 microvolts per meter for the nighttime interference value. That, of course, does not have any bearing direct on the late afternoon conditions.

Q. You said 200 microvolts, did you?—A. Yes.

Q. Do you have available the C. C. I. R. Curve?—A. Yes; I do.

Q. What would be the signal on the basis of that curve, exceeding 10 percent of the time?—A. Which hour will you have, the second hour after sunset or the first one?

Q. Let us take the second hour after sunset, to be fair?—A. That would show about 250 microvolts per meter.

Q. In the month of December, what was the time of day you testified that nighttime conditions would begin to become apparent?—A. Between 2:30 and 3:30 p. m.

Q. At Dubuque?—A. Yes. Of course, an interferring signal being apparent and being a serious source of interference are two different things.

Q. To what extent would a 200 microvolt signal limit the proposed station?—A. It would limit it to the 4 millivolt line based upon assumed nighttime operating conditions.

The EXAMINER. How far out would that be?

The WITNESS. It would be around 16 miles.

The EXAMINER. All right, go ahead.

By Mr. ROLLO:

Q. Did you assume 5 kilowatt operation by WSPD or 1 kilowatt?—A. I used 1 kilowatt because that is their nighttime power.

Q. Assume 5 kilowatts at WSPD, and give us according to this last curve what the signal would be 10 percent of the time
129 in Dubuque?—A. What is the use of assuming something they cannot operate with. They cannot have 5 kilowatts.

Q. Will you just answer my question.—A. It is the square root of the other figure I gave you, 2.24 times the other figure.

Q. You gave 250?—A. Yes.

Q. And 2.24 times 250 would be how much?—A. 560.

Q. 560 microvolts, a. 1 to what extent would that limit a station in Dubuque?—A. That would limit it at night to the 11.2 millivolt per meter contour.

Q. What distance would that be from the transmitter?—A. That would be about eight miles or so.

Q. Referring to your Exhibit 9, the tabulation of population, you have included it down to the 100 microvolt contour, have you not?—A. I have.

Q. And on your Exhibit 10, have you included the stations rendering service down to that point?—A. No; I have not.

Q. That would add a number of stations if that were done, would it not?—A. It would add stations within the 100 microvolt line; yes.

Q. And they appear on the list of measurements made by Mr. Burch, do they not?—A. Yes; all stations above 100 microvolts per meter were measured by Mr. Burch.

Q. You testified that WMAQ and WMT were the only two stations serving the entire area to be served by the proposed station, is that correct?—A. The entire rural area.

Q. Where the measurements of WMT on which you based that statement, based on 2½ kilowatt operation or 5 kilowatt operation?—A. I believe I will have to consult my associate Mr. Burch, on that.

Mr. BURCH. It was 2½.

By Mr. ROLLO:

Q. If they have increased their power to 5 kilowatts, it will be correspondingly stronger over the area?—A. Yes; it will increase the signal by 41 percent.

Q. There are a number of stations serving portions of the area, are there not; that is, portions of the area that would be served by the proposed station?—A. You mean portions of the five-tenths contour; yes, there are a number of stations that do serve a portion of that contour.

130 Q. What value at a mile unattenuated did you assume for your proposed radiator in drawing your contour?—A. I assumed 173 millivolts per meter.

Q. Is that per kilowatt?—A. Yes; for one kilowatt, and multiplying that by .707 for 500 watts, it is 122 millivolts per meter as the actual value used.

Q. Have you discussed with the applicant this question of short wave equipment to be used for remote control work?—A. Yes; I have.

Q. What types of stations do you have in mind?—A. I have in mind one of those portable transmitters that a man can carry around on his back and make short-distance contacts with the nearest telephone line.

Q. To be operated on the ultra-high frequencies?—A. Yes.

Q. What is the maximum distance you can effectively cover on those frequencies?—A. It depends on the power, of course.

Q. Assuming the pack transmitter you described?—A. With a portable transmitter possibly five or possibly ten miles.

Q. Centainly no more than ten miles?—A. Depending on the power, of course.

Q. What would be the maximum power you would expect to get out of a pack transmitter?—A. One carried around on the back would be limited to a few watts.

Q. Is a few watts power which you have in mind something like 5 watts?—A. Yes; something like that.

Q. Would 5 watts carry 10 miles on the ultra-high frequencies?—A. Sometimes it would, but you might have to cut down to five miles in some cases, depending on the receiving conditions a good deal.

Q. Under no circumstances would you expect to get a larger covering?—A. Yes; under better than average conditions at the reception point.

Q. In your opinion, what would be the maximum distance you could have under any circumstances?—A. I would say 15 to 20 miles for that amount of power.

Mr. ROLLO. That is all.

The EXAMINER. Have you any questions, Mr. Berry?

Mr. BERRY. I have just one question I want to ask, I believe.

The EXAMINER. All right, you may proceed.

131 Cross-examination by Mr. BERRY:

Q. Mr. Barron, you stated the distance you would expect good service rendered on this proposed station was how many miles?—A. I didn't state that, but one of the exhibits showed it.

Q. How many miles out would you expect good service, as far as 35 miles?—A. 35 miles for what is termed good rural service.

Q. What would be the signal strength you would expect at that distance?—A. 500 microvolts per meter.

Q. Did you determine the conductivity of that area and if so, what was it?—A. Yes; I calculated the conductivity towards the east and west from measurements made of WKBB and found same to be very close to the 1x10 to the minus 13nth.

Mr. BERRY. That is all.

The EXAMINER. Have you any questions, Mr. Johnston?

Cross-examination by Mr. JOHNSTON:

Q. Mr. Barron, there is an hour's difference in the time at Toledo and Dubuque, is there not?—A. Yes; there is.

Q. And the station at Toledo would operate an hour beyond sunset at Dubuque, would it not?—A. No; it would cease operation when it was sunset at Dubuque.

Mr. JOHNSON. That is all.

Mr. ROLLO. I have one more question.

The EXAMINER. You may proceed.

By Mr. ROLLO:

Q. What type of amplifier is proposed to be used in the transmitter of the Telegraph-Herald application?—A. I cannot state that offhand, but I think it shown in the application. Of course, the equipment has to be approved by the Commission, and that is about the only thing to worry about.

I see the application does not show it, but it says such petition is on file with the Commission, and I do not recall the type of output circuit.

Mr. ROLLO. That is all.

132 Mr. LOVETT. I would like to ask one more question.

The EXAMINER. Proceed.

Redirect examination by Mr. LOVETT:

Q. Mr. Barron, if the applicant did use a short-wave transmitter in broadcast pick-up service, such as an automobile service, how far would that operate satisfactorily?—A. By that you mean a transmitter set on a truck with higher power?

Q. Yes.—A. You could cover from 30 to 40 miles easily.

Q. Do you know whether or not that is also contemplated by the applicant?—A. That is being contemplated; yes.

Q. In connection with the 5-watt transmitter which you have just mentioned?—A. Yes.

Mr. LOVETT. That is all.

The EXAMINER. The witness will stand aside. At this time we will take a recess until one-thirty o'clock.

(Whereupon at 12:00 o'clock noon a recess was taken until 1:30 o'clock p. m.)

AFTERNOON SESSION

(The hearing was resumed at 1:00 o'clock p. m., pursuant to taking of the recess.)

The EXAMINER. We will proceed with the hearing, if you are ready.

By agreement of counsel the testimony of the protestant the Telegraph-Herald Company begun on Thursday, July 14, 1932, in a hearing before the Federal Radio Commission at Washington, D. C., Docket No. 1693, shall become the record in the consolidated hearing in Dockets Nos. 3967 and 4031 and be considered by the Commission as a part of the testimony in said consolidated cases.

You may proceed; call your next witness.

Mr. LOVETT. That concludes our testimony.

Mr. ROLLO. I understood when we left at noon, Mr. Barron was still on the stand, and did not know that he had been excused, and I have just one question to ask. May he be recalled for that purpose?

The EXAMINER. Yes; you may recall Mr. Barron.

133 Whereupon JOHN H. BARRON was recalled as a witness and testified further as follows:

Cross examination by Mr. ROLLO:

Q. Mr. Barron, in your testimony this morning in reference to the relay stations on the ultra-high frequencies, what frequency band did you have in mind?—A. I was thinking in terms of the frequency bands above 30 megacycles.

Mr. ROLLO. That is all.

The EXAMINER. The witness may stand aside and you may call your first witness, Mr. Rollo.

Mr. ROLLO. I will call Mr. Page.

Whereupon E. G. PAGE was called as a witness on behalf of WKBB, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. ROLLO:

Q. State your name.—A. E. C. Page.

Q. Where do you reside?—A. Evanston, Illinois.

Q. What is your profession?—A. Consulting engineer.

Mr. ROLLO. I offer Mr. Page as an expert witness, shall I qualify him?

The EXAMINER. Is there any question about his qualifications?

Mr. BERRY. None, so far as we are concerned.

The EXAMINER. He has appeared here before this Examiner, I think, on more than one occasion, and if there is no controversy about it, we will let the record show his qualifications are waived.

Mr. LOVETT. We concede his qualifications.

The EXAMINER. You may proceed, Mr. Rollo.

By Mr. ROLLO:

Q. Mr. Page, have you been engaged by Sanders Bros. Radio Station, the licensee of radio station WKBB, to make a field intensity survey and do the other work in connection with the pending application?—A. Yes; I have.

134 Q. Did you make a field intensity survey of Station WKBB?—A. Yes; on April 7th and subsequent days I made field intensity measurements at WKBB.

Q. Have you tabulated those measurements?—A. Yes; they are tabulated in this list.

Q. I show you what has been marked WKBB Exhibit No. 4 and ask you to state what that is.—A. That is a list of the field intensity measurements, given the number, the kind, the location, and the intensity measurement on April 7th, 1936.

Q. I now show you what has been marked WKBB Exhibit No. 5, and ask you to state what that is.—A. This is a list of the field intensity measurements made on April 8th, 1936, of WKBB in the Dubuque area.

Q. Tabulated in the same manner?—A. Yes; tabulated in the same manner as the first.

Q. I show you what has been marked Applicant's Exhibit 6, will you please state what that is?—A. This is field intensity measurements made of WKBB on April 9th, 1936, tabulated in the same manner as the first.

Q. I show you what has been marked WKBB Exhibit No. 7, and ask you to describe it.—A. Exhibit No. 7 shows the field intensity measurements made of WKBB in the Dubuque area on April 10, 1936, and tabulated as previous ones have been.

Q. I now show you what has been marked WKBB Exhibit No. 8 and ask you to describe it.—A. This is a map showing the locations of certain of these field intensity measurements, as it is very difficult to refer to them by a verbal description, and the numbers on the map correspond with the measurement numbers on the list which have been referred to, and the lists refer to the numbers on the map.

Q. Do these tabulations you have identified present a correct tabulations of the measurements made by you?—A. They do.

Q. And these tabulations were made by you?—A. They were.

Mr. Rollo. Mr. Examiner, I now offer in evidence Exhibits 4 to 7, Applicant WKBB, inclusive.

The Examiner. Exhibit 4 to 7 inclusive of WKBB are admitted in evidence.

135 (The documents referred to were received in evidence and marked "Exhibits 4, 5, 6, and 7, Dockets 3967 and 4031," and are filed with the transcript in possession of the Commission.)

Mr. Rollo. I also offer in evidence WKBB Exhibit No. 8, being a map which the witness just described in conjunction with the measurements.

The Examiner. WKBB Exhibit No. 8 is admitted in evidence.

(The map referred to was received in evidence and marked "WKBB Exhibit No. 8, Dockets 3967 and 4031," and is filed with the transcript in possession of the Commission.)

By Mr. Rollo:

Q. Mr. Page, I notice that you have another line on this map that you have not described; what is that?—A. That is the approximate 7 millivolt per meter contour of WKBB based upon field intensity measurements made during this survey, showing the general shape of the field distribution in the immediate vicinity of Dubuque.

Q. I show you what has been marked WKBB Exhibit No. 9, and ask you to describe it.—A. That is a United States Geological Survey map of the area surrounding Dubuque, Iowa, on which are shown the one-half millivolt contours of WKBB, operating with its licensed power of 250 watts, based upon the measurements made in the survey of April 1936, the measurements which have just been submitted as exhibits 4 to 7. The inner circle is the computed 2 millivolt per meter contour for a power of 100 watts, which would be the nighttime operating condition of WKBB.

Mr. LOVETT. On what type of antenna is that based?

The WITNESS. These are measurements of WKBB operating with their present antenna system, which is the same as they had on April 9th and the subsequent dates during the survey.

By Mr. ROLLO:

Q. Was this map prepared by you?—A. It was.

Mr. ROLLO. I offer the map in evidence as WKBB Exhibit No. 9.

136 The EXAMINER. WKBB Exhibit No. 9 is admitted in evidence.

(The map referred to was received in evidence and marked "WKBB Exhibit No. 9, Dockets 3967 and 4031," and is filed with the transcript in possession of the Commission.)

By Mr. ROLLO:

Q. I do not believe I understood your testimony as to the 2 millivolt contour; what does that represent?—A. The 2 millivolt contour represents the limit of the nighttime service area of WKBB.

Q. At its present location?—A. Yes; at its present location.

Q. I show you what has been marked WKBB Exhibit No. 10, and ask you to describe it.—A. This exhibit is a map of the calculated field intensity contours of WKBB operating on a power of 250 watts for the outer contour, which is the calculated one-half millivolt contour.

This calculation assumes a new location for the station about 3 miles south of the center of the city of Dubuque, and is based on the conductivity observed and calculated as the result of the survey of April 9th and the subsequent days.

It assumes an antenna 250 feet high operating at 48-one-hundredths wave lengths, which will deliver an unattenuated field of 225 millivolts per meter per kilowatt input at a mile.

The inner contour is the calculated 2 millivolt contour for a power of 100 watts in the same antenna.

Q. Are you prepared to state that is correct as you have described it?—A. Yes, sir.

Q. And was the map prepared by you?—A. Yes; it was.

Mr. ROLLO. I offer this map in evidence as WKBB Exhibit No. 10.

The EXAMINER. WKBB Exhibit No. 10 will be admitted in evidence.

(The map referred to was received in evidence and marked "WKBB Exhibit No. 10, Dockets Nos. 3967 and 4031," and is filed with the transcript in possession of the Commission.)

137 By Mr. ROLLO:

Q. In connection with Exhibit No. 10, Mr. Page, I call your attention to the fact that the half-millivolt contour which you stated on Exhibit No. 10 will be delivered by WKBB as proposed is slightly larger than the half-millivolt contour as shown in Mr. Barron's exhibit which was introduced this morning. Will you explain what reasons there may be, if any, for that apparent discrepancy. That is a larger service from 250 watts than from a 500-watt station?—A. Mr. Barron has assumed a conductivity, he testified, of 10 to the minus 13nth emu, and has based his predicted intensities on that conductivity. That is slightly different than the conductivity I computed based upon the 142 measurements I made in the area. The average conductivity which I have used in drawing my conclusions of the calculated contours in my exhibit are based on a maximum conductivity of 1.6 times 10 to the minus 13nth emu, and a minimum of .95 times 10 to the minus 13nth emu, which accounts for a certain difference in the two maps.

Mr. Barron has assumed an antenna delivering an unattenuated field of 122 millivolts per meter at a mile for his power of 500 watts. The antenna which we proposed to install will deliver a field of 112½ millivolts per meter at a mile unattenuated value for 250 watts power.

Q. On the assumptions you have made, as you have just described them, what would you expect the proposed station of the Telegraph-Herald to have in this area of a half-millivolt contour, in terms of miles?—A. Using the values for conductivity that I have found, I would expect that the Telegraph-Herald station would have a radius of about 6 to 7 miles greater than the one which is indicated on my map for WKBB, and not smaller as it is shown on Mr. Barron's exhibit.

Q. Will you tell us in miles what the average radius is for the half-millivolt contour of WKBB as proposed by this application?—A. The average radius of the half-millivolt contour for WKBB operating in its proposed location with the proposed antenna will be about 32½ miles.

Mr. BERRY. What station is that?

138 The WITNESS. WKBB, operating in a new location three miles south of Dubuque with a 250-foot vertical radiator.

The EXAMINER. That is the site set out in the application?

Mr. ROLLO. The application does not state a definite site, and this is to justify this tentative site.

By Mr. ROLLO:

Q. In connection with the tentative site, have you been authorized to conduct a regular location survey before determining on a definite site in the event the application is granted?—A. I have.

Q. And that will be done?—A. Yes.

Q. What radius in miles would you expect from the Telegraph-Herald station to its half-millivolt-per-meter contour?—A. Approximately 39 miles.

The EXAMINER. In other words, there is a variation in coverage of about 7 miles?

The WITNESS. About that.

Mr. BERRY. Four to seven, is it not?

The WITNESS. It is 32½ to about 39. Of course, you understand the contour shape is irregular.

By Mr. ROLLO:

Q. In plotting the expected contours on Exhibit 10, what conductivity value did you use?—A. The valuation between 0.9 times 10 to the minus 13nth, and 1.6 times 10 to the minus 13nth emu.

Q. Does that account for the slightly irregular pattern?—A. Yes, sir.

Q. Can you tell me now, comparing Exhibit No. 9 which is the present coverage, and Exhibit 10 which is the expected coverage of WKBB, approximately how much of Grant County, Wisconsin, now receives service from WKBB?—A. Yes; it is approximately one-seventh of Grant County.

Q. What percentage of the county will be served under the proposed operation?—A. About one half.

Q. Will you make that same comparison of the other five counties which have been discussed in this hearing, namely, Jo Daviess County in Illinois, Jackson County, Dubuque County, Delaware County, and Clayton County in Iowa?—

139 A. Approximately one-sixth of Lafayette County is now being served by WKBB with a signal of half a millivolt or more, and approximately one-half of Lafayette County will receive the same grade of service with the proposed antenna and location.

Approximately one-third of Jo Daviess County now receives service from WKBB of a half millivolt or more. Approximately three-quarters of Jo Daviess County will receive the same grade of service with the proposed antenna and location.

None of Carroll County, Illinois, now receives service of a half millivolt or more from WKBB, and approximately one-tenth of Carroll County will receive such service with the proposed antenna and location.

Approximately five-ninths of Jackson County, Iowa, now receives service of a half millivolt or more from WKBB. Nine-tenths of Jackson County will receive service of a half millivolt or more with the proposed antenna and location.

About one-sixth of Jones County now receives service of half millivolt or more from WKBB. Approximately half of Jones County will receive service of half a millivolt or more with the proposed location and antenna.

WKBB now has a signal of a half millivolt or more over nine-tenths of Dubuque County and will serve the entire county with a half millivolt or more with the new location and antenna.

About one-fiftieth of Clayton County now receives service of half a millivolt or more from WKBB and approximately one-seventh of Clayton County will receive service of a half millivolt or more from the new location and new antenna.

None of Delaware County now receives service of half a millivolt or more from WKBB, and a little better than two-fifths of Delaware County will receive service of half a millivolt or more from the new location and new antenna.

Q. That takes care of all the surrounding counties?—A. I believe it does, unless I have missed Clinton County. None of Clinton County is now receiving service from WKBB of half a millivolt or more, and approximately one-fourth of Clinton County will receive such service with the new location and new antenna.

140 Q. This application proposes a move, as you have testified, can you tell us about how far it is in miles from the present location of WKBB to the tentative site which you have described?—A. It is approximately two and one-half miles.

Q. Would that move deprive any portion of the present service area of WKBB within its half-millivolt-per-meter contour of any service?—A. No, sir.

Q. So that all of the area now receiving service from WKBB would still get service under the proposed move?—A. All of the area now receiving service of a half millivolt per meter or more will receive the same or better service if the proposed change is made.

Q. Have you made a calculation of the population residing within the contours shown on Exhibits 9 and 10?—A. Yes.

Q. I now show you what has been marked WKBB Exhibit 11, and ask you to tell us what it is?—A. This is a tabulated list of the population residing within the various contours of WKBB under present conditions and under the proposed conditions; that is, when the new antenna and new location are established.

The population residing within the half-millivolt contour daytime at the present location is 94,986 inhabitants.

Q. In addition to the population estimate, is there any other information contained on the exhibit?—A. There is a list of counties in Iowa, Wisconsin, and Illinois immediately surrounding the city of Dubuque, their population is taken from the 1930 census, volume 1, and the approximate distance to the center of the county from Dubuque and to the extreme edge of the county from Dubuque, are shown.

Q. With reference to that list or tabulation, keeping in mind the radius that you testified to that the Telegraph-Herald would be expected to cover with the half millivolt or better, can you tell us which counties would receive service in their entirety from that proposed station?—A. Dubuque County, possibly Jackson County, and possibly Jo Daviess County, Illinois, would receive complete coverage of a half millivolt or more from the proposed station of the Telegraph-Herald.

Q. Was this exhibit prepared by you?—A. It was.

Q. Is it correct?—A. It is.

441 Mr. ROLLO. I offer in evidence WKBB Exhibit No. 11.

The EXAMINER. WKBB Exhibit No. 11 will be admitted in evidence.

(The document referred to was received in evidence and marked "WKBB Exhibit No. 11, Dockets Nos. 3967 and 4031," and is filed with the transcript in possession of the Commission.)

By Mr. ROLLO:

Q. What factors did you consider in determining upon the tentative location you have described?—A. The tentative location is in an area to the south of Dubuque where the field intensity measurements made show that the conductivity was as high as any experienced in the area. The soil is of Miami silt loam deep phase. Although the underlying hills are rock, still the thickness of this loam makes the conductivity good.

There are a number of open locations on which there is sufficient level ground to install a proper ground system.

The general site under consideration is far enough from Dubuque so that only a very small percentage of the inhabitants will lie within the so-called blanket radius of the station.

Q. Did you also make a study of the soil map in obtaining your information?—A. I made a study of the Department of Agriculture's soil map for the Dubuque area, including this location, and made a personal inspection of the territory, as well as information I gathered during observations while making actual field measurements of the entire survey.

Q. Will you describe the antenna and ground system proposed by the application of WKBB?—A. The proposed antenna is a Truscon vertical radiator, 250 feet above ground. Previous ex-

perience with this type of radiator and measurements of this type of radiator show that it will have an electrical length of approximately 48-one-hundredths of a wave.

Such an antenna will produce unattenuated fields of 225 millivolts per meter at a mile per kilowatt input, or 112½ millivolts per meter at a mile for 250 watts.

Q. What would the ground attenuation be at a mile for 100 watts operation?—A. 71 millivolts per meter.

142 Q. What is the present antenna efficiency of WKBB?—A. I measured the resistance and reaction of the present antenna and also current flowing in the antenna, and I find that the present power in the WKBB antenna was 270 watts.

A number of measurements were made at distances within two miles to three miles of the antenna, and as the result of these measurements I was able to compute intensity value at a mile per kilowatt, and that value is 119 millivolts for the present WKBB antenna.

Q. That 119 millivolts per meter is comparative with the 225 millivolts per meter you testified of the proposed antenna?—A. That is right. The ground system will be 100 radials of one-inch copper ribbon, 250 feet long, equally spaced and buried radially, the antenna at the center, and also a 30-foot square ground screen immediately below the radiator to reduce the ground losses.

Q. Is it the plan of the applicant to use its present transmitter?—A. Yes; it is.

Q. Will you give us the engineering reasons for the proposed move?—A. The present site of the transmitter of WKBB from an engineering standpoint is a very poor one. It is located on the top of a rocky cliff at the edge of the Mississippi River. The soil on top of this cliff is of a sand or sandy loam type, which is known to have very poor conductivity.

The spot is so rough that it would be impossible to put in an adequate ground system and there might even be some difficulty in erecting a tower at that site.

Being located at an abrupt change of type of terrain, such as on a cliff along the Mississippi River, there would be undoubtedly considerable attenuation in any direction along this cliff where there is a changed media sharply from the river soil to the cliff, and vice versa.

Measurements made along the river and along the cliff show the attenuation to be very high. Measurements over on the Iowa side of the river in the country immediately to the south of Dubuque show the attenuation to be low.

Considerable improvement in the efficiency of the station could be realized by locating in this area of low attenuation.

Q. What have you to say with reference to the density of population to be served as between the two locations, the
143 existing one and the proposed location?—A. There is very little change in the distance from the center of population. The curve produces a rotation of the station around the center of population rather than much of a change with reference to such center.

Q. In addition to the measurements you made on WKBB, did you make any other field intensity measurements?—A. Yes; I did. I measured the service available in the city of Dubuque on April 9th.

Q. I now show you what has been marked WKBB Exhibit No. 12, and ask if that is a tabulation of the measurements you made at Dubuque?—A. This is a tabulation of the measurements made at Dubuque April 9th and represents all of the service in the broadcast band which I could measure at that time. The call letters of the stations, the frequencies and intensity in millivolts per meter are listed.

Q. When were these measurements made?—A. These measurements were made at noon; that is, the first measurement commenced at noon and the elapsed time was about an hour.

Q. Does this exhibit represent a correct tabulation of the results of your measurements?—A. It does.

Q. Was it prepared by you?—A. It was.

Mr. Rollo. I offer in evidence at this time, WKBB Exhibit No. 12.

The Examiner. WKBB Exhibit No. 12 is admitted in evidence.

(The document referred to was received in evidence and marked "WKBB Exhibit No. 12, Dockets Nos. 3697 and 4031," and is filed with the transcript in possession of the Commission.)

By Mr. Rollo:

Q. As the result of your observations of the service received in Dubuque, what have you to say on that subject?—A. In general the service received in Dubuque, in the Dubuque area, is average for the midwest part of the country. It receives service comparable with most other communities in Iowa. I would say that the service was about average.

The city of Dubuque does not receive any signal of 10 millivolts or more except from WKBB, but I believe Mr. Barron covered that.

144 The Examiner. Does it receive primary service from any other station than WKBB?

The Witness. Yes; it does.

The Examiner. I wish you would name the stations and give their locations.

The WITNESS. According to my measurements, it is in the primary service area of WHO, WJN, WMAQ, and WMT. All of those stations have a signal of 500 microvolts or more per meter. I excepted WKBB, but, of course, it is within the primary service area of WKBB.

By Mr. ROLLO:

Q. Have you inspected the present site of WKBB thoroughly?—A. Yes; I have.

Q. Is it at all possible, in your opinion as a radio engineer, to construct an efficient antenna at that location—an efficient radiating system?—A. No; it is not possible to construct an efficient radiating system at the present location without undue and elaborate filling in, and even if that were done, you still have the fact that located on the cliff along the river severe attenuation will occur.

Q. Would there be any disadvantage to moving the station into Illinois a few miles, or north in Illinois, rather than into Iowa?—A. I find that the conductivity in those portions of Illinois is not as good as the conductivity on the Iowa side. The soil type is somewhat different. Electrically I should say that the results would not be quite as good.

Mr. ROLLO. That is all, you may cross-examine.

The EXAMINER. You may cross-examine, Mr. Lovett.

Cross-examination by Mr. LOVETT:

Q. Mr. Page, did you find any flat country along the Mississippi River in Illinois?—A. Yes, sir.

Q. Wasn't that suitable for your purposes?—A. No, sir; because the flat country along the Mississippi River in Illinois on April 9th it was several feet under water.

Q. That would not necessarily make it disadvantageous for the location of an antenna?—A. That is only one of the reasons.

The soil type along the river on the Illinois side and on the
145 Iowa side as well, is Wabash sandy loam and there are numerous sand deposits. That is not a proper place to locate a radio station, and the river does flood almost all of the flats, that is, the land on both sides of the river.

Q. Would not the effect of that have to be determined by site tests?—A. No; I have made numerous location surveys, and without exception locations over sand are very poor, regardless of whether the sand is moist or dry. The rising and falling of the water there presents a mechanical problem which I think is serious to the erection of an antenna.

Q. Is this a definite proposal which you are making, regarding the transmitter site?—A. Yes, sir; I have recommended the site immediately south of the city of Dubuque.

Q. Do you know whether or not any arrangements have been made for the use of that site in the event it is approved?—A. The site has not been definitely determined. An area there of a mile or so in diameter is the general location where we propose to locate the station. The soil in that area is good and there are numerous good spots.

Q. This point you mention three miles south of the business section is one which you are now definitely proposing, and upon which you are basing your calculations of the covered area?—A. These calculations are based upon that location, but a change of location off half a mile or more, or around a half mile in any direction will not materially affect the results of my computations.

Q. For the purpose of this hearing, this is a definite proposal on your part as to the site for the new transmitter, is that right?—A. Yes, sir.

Q. Will you state whether or not during the time you made these measurements, the flood season was at its height?—A. I don't believe it was at its height, but it was certainly in the flood season.

Q. It was getting there very fast?—A. Yes, sir.

Q. Would not the fact that measurements were made during the flood season have a tendency to result in lower attenuation values resulting from the measurements?—A. Somewhat.

Q. That would probably explain the difference in the conductivity?—A. It would explain some of the difference.

146 Q. I refer you to WKBB Exhibits 9 and 10, and call your attention to Exhibit 9 which showed an appreciable dent in the coverage area in the half and the 2 millivolt contours to the north. I also call your attention to Exhibit 10 which shows an appreciable bulge, if it may be so called, in the half millivolt contour in the same direction, and a regular contour represented by the 2-millivolt line, and ask you to explain why that difference should exist?—A. The predicted contours on this Exhibit No. 10 are based on conductivities which were computed along various radii. The depression in the half-millivolt contour under the present conditions is caused by the fact that the attenuation is higher in this particular area around Platteville. Between Platteville and the Mississippi River, the country rises rapidly toward Lancaster, and the type of soil becomes silt loam and clay, and the conductivity is much better up there, and the result is where you have an initial signal of a much greater value than you have in the present case, of the present coverage, the contour is extended.

Q. Upon what value was the contour to the north on Exhibit No. 9 based, was that based upon theory or upon actual meas-

urements?—A. Upon the actual measurement which you will find in the list. The measurements went out to distances considerably greater than the present one-millivolt contour.

Q. Did you determine the attenuation value at that point?—A. At that particular point?

Q. Yes.—A. No; in making these predicted contours the average attenuation out to the limit of the measurements was used, which I believe is the standard practice.

Q. The average in this direction?—A. Yes, sir.

Q. So, your theory is that there is a comparatively dead spot around Platteville?—A. No; the conductivity in that area is somewhat lower than the surrounding territory. It is quite hilly and stony there.

Q. In Exhibit No. 10, I also notice that the transmitter site is immediately south of the city, so that the signal will have to cross the city. What effect would that have on it?—A. The transmitter site will be considerably higher than the city of Dubuque. In fact, the average level of the city of Dubuque is about 200 feet lower than the average level of the land to the south, and I should not expect serious shadows from the city.

147 Some such shadow undoubtedly will occur, but I do not think that is within the province of a predicted contour to take into consideration minor shadows of that nature.

Q. You did not make your measurements from this point straight north across the city, then?—A. No; the measurements were made from the present transmitter site. We have made no site location survey south of Dubuque by setting up a transmitter site yet.

Q. So that, as a matter of fact, the contour which you have calculated here on Exhibit 10 might vary and not extend as far north as you have shown. Is that correct?—A. It might be. A shadow might be indicated there, although I should not expect a very serious one or a very large one, because of the difference in altitude between the city and the proposed location. The shadow at any rate would not be so great that contour would approach anywhere near the city limits of Dubuque.

Q. Let us assume the proposed Telegraph-Herald station will employ an antenna with an efficiency of 225 millivolts per meter at a kilowatt per mile——

Mr. ROLLO. (Interposing.) I object to that question because it is contrary to the proposed application, and the testimony in this hearing.

Mr. BERRY. Let him go ahead and answer the question, then counsel can cross-examine on it if he desires, but I would like to have his answer to the question given.

The EXAMINER. Objection overruled.

By Mr. Lovett:

Q. Where would the half millivolt contour lie if you used an attenuation value of 1.6 times 10 to the minus 13nth, and that is, of course, with 500 watts power?—A. You are assuming 1340 kilocycles, is that correct?

Q. That is correct.—A. Approximately 45 miles.

Q. You state that at this proposed site is *is* considerably higher in altitude than the city of Dubuque?—A. That is my impression from having been there and just looking at the contour map.

Q. Isn't it true that this general section there would be regarded as hilly?—A. Yes; it is hilly.

148 Q. You stated there are several stations with a primary service covering Dubuque, and you valued that service at 500 microvolts?—A. That is right.

Q. Is it your understanding that is a satisfactory signal for urban areas?—A. No; it is not satisfactory for an urban area. I stated in answer to the Examiner's question that Dubuque was within the primary service area of the stations which I mentioned. The primary service area of a station is limited by its one-half millivolt contour.

Q. So that it would not be highly satisfactory service in the city of Dubuque, but only in the country around it?—A. It would be satisfactory service in the residential area of the city of Dubuque, but not in the densely populated or business sections.

Q. Is 500 microvolts the standard for residential service?—A. No; 500 microvolts is not the standard for residential service where you are considering residential service of large cities. However, in the case of Dubuque, based on personal observations, I would say that it represents a fairly good grade of service, although according to standards, 2 millivolt per meter is required to give satisfactory service in average residential areas.

Mr. Lovett. That is all of this witness.

Mr. Johnston. I have a few questions, Mr. Examiner.

The Examiner. You may proceed.

Cross examination by Mr. Johnston:

Q. Mr. Page, did you make any measurements on the WSPD signal?—A. I tried to measure the signal of WSPD in the daytime at Dubuque, but I could not measure it, because it was below the noise level, seemed to be somewhat below 20 microvolts, and was impossible to measure.

Q. Did you make any nighttime measurements?—A. I did make some nighttime observations—recordings.

Q. Can you state the order of WSPD's signal in that area at night?

Mr. Lovett. Is this at nighttime or late afternoon? I object to nighttime signal.

149 The EXAMINER. The objection will be sustained as to nighttime service.

Mr. JOHNSTON. Mr. Examiner, I notice this is a daytime application, but this morning there was testimony of Mr. Barron estimating the WSPD signal at nighttime in Dubuque, showing that interference might be caused in the early morning and late afternoon hours, and I would like to know what the signal is.

The EXAMINER. If you will frame your question along that line I would not sustain the objection, but if you call it just nighttime service, I think that would have no application to this case.

By Mr. JOHNSTON:

Q. Based on your measurements and your experience and knowledge as an expert radio engineer, would you expect any interference to the proposed Telegraph-Herald station from WSPD at any time?—A. I would expect that there would be some degree of interference experienced within the half millivolt contour of the proposed station caused principally by WSPD in the early morning and late afternoon hours. The frequency and magnitude of such interference will depend upon the season and the sun-spot cycle.

Q. At what season would you expect interference?—A. The interference will probably be of greater magnitude during the winter months as sunset occurs earlier, and the layer has a tendency to form earlier in the afternoon hours.

Q. About what would you expect the extent of that interference to be, and about how long would it exist?—A. That would be rather difficult to estimate. Based upon what I know of the value of their signal several hours after sunset, if I may refer to that, I would say the interference in the afternoon in the winter months during the immediate hour before sunsets could be quite serious on occasions, and the service of this proposed station limited on occasions to its approximate 7 millivolt contour. However, that will not be regular, nor will it occur all of the time.

Q. Would you expect the station at Dubuque to cause any interference to WSPD's service?—A. In view of the fact that WSPD is operating on 5,000 watts in the daytime
150 and reducing power one hour at least, previous to the time the proposed station would sign off, I would expect that some degree of interference would be experienced on occasions within the half millivolt contour of WSPD, but I would not consider that serious.

Mr. JOHNSTON. That is all.

The EXAMINER. Are there any further questions?

Mr. BERRY. I have one or two questions.

The EXAMINER. All right, you may proceed.

Cross-examination by Mr. BERRY:

Q. Mr. Page, what observation did you make up and down the river there for a space of three, four, or five miles?—A. I did not make any observation as far away as five miles, because I am considering the location of a local station which is to operate on a 100 watts, but I did drive up and down the river on both sides, consulted soil maps, and made observations of the condition of the river. I was there at the flood season, and I also made several trips previous to the flood season.

In fact, there was one location considered for the antenna which I thought would probably be satisfactory, and I was told it would not be, and later found out it would not be. It was under about fifteen feet of water in April.

Q. Going back to my question, you say you did not make any observations up and down there four and a half or five miles. That is the question I was trying to get information about?—A. I made observations down the river as far as four miles. Up the river, on the Wisconsin side, was not considered because there is a sharp cliff all of the way up the river and no bottom lands.

Q. Was your survey made for the purpose solely of locating a site, or to determine the signal strength of your station at various points?—A. My survey was made to determine the coverage of the station and to choose a new site in which to locate the station, because the present one was known to be poor and the results not as good as might be expected of such power.

Q. In your quest for a site, just what did you do so far as the search about there was concerned, did you just go
151 down three miles or four miles, or whatever the distance was you went south of Dubuque, or did you go around the city at various other points to determine the location?—A. During the taking of the field measurements I inspected the territory around Dubuque, and I also studied that territory with the aid of a soil map and a contour map, and there were certain areas where likely spots could be obtained.

In the hilly country to the south of Dubuque, for instance, there were sufficient flat open spots to provide a good location for an antenna. There were other locations investigated, that is, observed, and the soil map and contour map studied and the site inspected, but they were not as suitable as the locations to the south of Dubuque, in my opinion.

Q. Is all of that territory immediately adjacent to Dubuque, both on the Dubuque side and on the east side of the river, except the elevation you found, is that all alluvial deposits there from the Mississippi River?—A. Yes, sir.

Q. Is alluvial deposit regarded as fit for the location of the transmission of electro-magnetic signals?—A. It depends upon what the deposit consists of. This particular deposit along the Mississippi in the vicinity of Dubuque has large sandy areas in it, deposits of sand.

Q. Those are sand bars thrown up from the river?—A. Yes, sir; and they extend back to the cliffs.

Q. What I have reference to more especially is the land after you leave the banks of the river. As I understand from your statement the banks are very precipitous there at points?—A. That is correct.

Q. Then, extending on back from the river, what is the character of the soil; is that a deposit from the river?—A. That is a deposit. It is a silt-loam type of soil, and it is the Miami type generally. It covers a layer of stony loam which is almost like a clay, and underneath that lies the limestone bedrock. That Miami silt loam posseses very good conductivity of electro-magnetic waves.

Q. After you move across the river from your present site sending your signal back in the direction from which you propose to move your transmitter and station, what area would there be served on that side of the river from which you
152 are proposing to move, in addition to the town where the site is at present located, that is, what other towns would then fall within your good service area?—A. If I understand you correctly, the increase in efficiency which will be attained by making the move and erecting a new radiator will so extend the half millivolt contour primary service area that it will cover all of the territory now covered by WKBB and more.

Q. Are there any towns over there on that side it will cover, besides the one you are in now?—A. On the Illinois side of the river there is the town of Galena.

Q. Do you happen to have the population of that?—A. I have it right here.

Q. If it is convenient, you can give that for us.

The Examiner. That is the county seat of that county?

The Witness. I believe it is. The population of Galena is 2,878.

By Mr. Berry:

Q. What distance is that from the present site?—A. Eleven and one-half miles to the center of Galena from the present location.

Q. Does your station serve that town now, according to your judgment?—A. The city of Galena now receives a signal of 2 millivolts per meter from WKBB.

Q. And from your proposed site it will receive what kind of service?—A. It will receive a signal of 3 and 3¾ millivolts per meter, about. There is very little change in the distance between the proposed site and the present site to Galena.

Q. Your proposed site is somewhat within a radius of a mile square south of Dubuque; is that right?—A. Yes, sir.

Q. And that is three miles from your present site?—A. Approximately.

Q. And that will put it slightly to the southwest of where your present site is?—A. Yes; about two and one-half miles southwest.

Q. When you send out your signal in the direction of Galena, will that signal be attenuated any from your present site?—A. Yes.

Q. And in what other directions from that proposed site would your signal suffer attenuation?—A. The signal is going to suffer attenuation in all directions from any site. I do not quite understand your question.

153 Q. Let us see if I can make it any plainer. You do not have any particular site within that mile square where you will locate your station; you have selected arbitrarily a place you say is a mile square?—A. The area is approximately a mile square in which it is possible to find a suitable site.

Q. Does it make any difference now from your standpoint as an engineer which place you put it there within that mile?—A. No, sir; very little difference. A location survey would show which spot is the best.

Q. I understood that, and you have not yet determined on the exact point?—A. No, sir.

Q. You are reserving that until after you get the application granted, then you propose to make a survey, as I understand?—A. That is correct.

Q. And any place in there that you have passed over and observed, you say would be satisfactory?—A. Yes, sir.

Q. So far as other towns around there are concerned, have your testified with reference to other towns; you estimated, for instance, what the population would be that would be taken in, and how did you reach that figure as the population?—A. The population figures were estimated in the standard manner.

Q. What is the standard manner?—A. Each county was taken, and the city population subtracted from the entire population. The area surveyed in any area was measured with a planimeter, and that fraction taken of the rural population. Then, such cities as fell within the half millivolt contour in that area was added back in, and that was done for each county and the total for the complete figures was found.

Q. Did your state when this survey was made, and if not, when was it?—A. April 9, 1936, the date when the survey was commenced.

Mr. BERRY. I think that is all.

Mr. ROLLO. I have a few questions on redirect.

Redirect examination by Mr. ROLLO:

Q. With reference to the measurements you made of the service received in Dubuque, what percentage of departure from normal conditions would you expect to be caused by
134 flood conditions?—A. I would expect that during flood conditions there would be somewhat of an increase in conductivity of the soils around there, if that is what you mean.

Q. Would that be much of a difference, or just a slight increase?—A. In my opinion it would be slight.

Q. Do you recall the stations which you enumerated that were delivering primary service to Dubuque?—A. I have them right here.

The EXAMINER. He has named those stations.

By Mr. ROLLO:

Q. What field intensities are those stations delivering?—A. I read that in answer to the previous question.

Q. That is already in the record?—A. Yes, sir.

Q. Is the attenuation in the direction of Galena from the proposed site any greater than any other directions?—A. Yes; that conductivity toward Galena is somewhat lower than the maximum direction. The country in there is very hilly, rough, and of a rocky nature between the WKBB site and the city of Galena.

Mr. ROLLO. I think that is all.

Mr. LOVETT. May I ask a few questions?

The EXAMINER. Yes; you may do so.

Recross-examination by Mr. LOVETT:

Q. You indicated, Mr. Page, I believe, that there would be some degree of interference from WSPD to the proposed Telegraph-Herald station early in the morning and late in the afternoon?—A. Yes, sir.

Q. Will you be a little more definite and tell us how early in the morning?—A. That will vary with the sunrise time. I am sorry, but I do not believe I have the sunrise and sunset tables here. It would probably be as late perhaps as two hours after sunrise, and that will depend upon the time of the year.

Q. What about this time of the year?—A. I am not familiar with the sunrise hours this time of the year.

Q. You say about two hours after sunrise?—A. Yes, sir.

Q. During that entire two hours, or how much of the time?—A. That will depend entirely upon the condition
155 of the layer. It is a very erratic proposition and it would be impossible to predict.

Q. Would you say 10 percent of the time, possibly?—A. It might be that and might be even greater during the hours you mention.

Q. It would be very slight, after all is said and done?—A. I am inclined to believe in the winter it would not be termed slight. In other words, there will be an interfering signal there strong enough to produce interference of an objectionable nature within your half millivolt contour.

Q. To what?—A. Perhaps I should say it this way: I would expect that objectionable interference would exist more than ten percent of the time during those hours in the winter months.

Q. How much more?—A. I would not be able to say that; it is very indefinite, and it has to be so.

Q. So far as late afternoon is concerned, assume local sunset is at 7:15, during what stage would this interference which you think might be objectionable, exist?—A. It would probably commence to be noticed in the hour immediately preceding 7:15.

Q. How long would it be objectionable?—A. I could not be specific in that case either. In order to determine that, measurements would have to be made, recordings would have to be taken of WSPD signal in the Dubuque area. It could be determined, but only through extensive measurements.

Q. Preferably when both stations are in operation?—A. No, sir; preferable when only WSPD was in operation.

Q. By itself on that channel?—A. Yes; so that it could be measured without interference.

Q. That would be rather impossible to measure because of other stations on the channel?—A. We could measure WSPD alone on that channel. The other stations on that channel are somewhat more remote and out of line.

Q. I believe you stated that there would not be objectionable interference caused by the proposed Telegraph-Herald station to WSPD; is that correct?—A. In my opinion, I do not believe there will be.

Mr. Lovett. That is all.

Mr. Berry. Let me ask one further question.

156 By Mr. Berry:

Q. Mr. Page; you have made a lot of surveys around in that country, have you not?—A. Yes, sir.

Q. If you know about what the signal strength of WMAQ would be at say about 25 or 30 miles west of Dubuque, could

you estimate that signal for me?—A. I think there are some measurements here on that.

Q. I will show you Exhibit No. 10; can you tell from that?—A. West of Dubuque, you say?

Q. Yes; that is, the present service.—A. The present half millivolt contour of WMAQ would extend quite a bit west of Dubuque. I would have to know what their field was at a mile in order to give you any absolute value. I have used the WMAQ signal as approximately 1½ millivolts at Dubuque, and based on that measurement, I assume that 40 miles west of Dubuque they would have half a millivolt.

Q. Are there any other stations east of Dubuque that render a similar service across into Dubuque and on the west, that you know of?—A. There is WIBA at Madison and WROK at Rockford that would serve the area east of Dubuque.

Q. How about serving Dubuque and to the west of Dubuque?—A. Dubuque is just outside of the half millivolt contour of WIBA, and it is considerably outside of the half millivolt contour of WROK.

Q. Then, are there any stations that now put down a suitable signal in the city of Dubuque, from an engineering standpoint in the city proper, I mean?—A. Based on the standards of signals necessary to cover city areas, there is only one station supplying the city of Dubuque with satisfactory service, and that is WKBB.

Mr. BERRY. That is all.

Mr. ROLLO. I have just one further question I want to ask.

By Mr. ROLLO:

Q. In your answer to the last question by Commission's counsel, you were referring to the 10 millivolt standard?—A. Yes, sir.

Q. And if the 2 millivolt standard is used, are there any other stations rendering such service?—A. Yes; WMT renders service of 2 millivolts per meter or more over Dubuque.
157 They have recently increased their power so that their service would be increased also.

Mr. ROLLO. That is all.

The EXAMINER. The witness may stand aside.

Mr. ROLLO. If the Examiner please, I would like to request that the Commission's engineer be put on now out of order, for the convenience of my people for one reason, as I would like to have our engineer here during his testimony, and then I think it would also be convenient to have all of the engineering testimony at one place in the record.

The EXAMINER. What have you to say to that, Mr. Berry?

Mr. BERRY. I have no objection to that.

The EXAMINER. Then let the Commission's engineer be called.

Mr. BERRY. I will call Mr. Davis.

Whereupon GEORGE C. DAVIS was called as a witness on behalf of the Commission, was duly sworn, and was examined and testified as follows:

Direct examination by Mr. BERRY:

Q. Will you state your name and occupation?—A. Mr. George C. Davis, engineer in the Broadcasting Section of the Commission's Engineering Department.

Mr. BERRY. Shall I qualify Mr. Davis?

The EXAMINER. Will the qualifications of Mr. Davis be conceded?

Mr. ROLLO. Yes; we concede them.

Mr. LOVEIT. We do also.

The EXAMINER. Let the record show that the qualifications of Mr. Davis as an expert radio engineer are conceded by the parties interested.

By Mr. BERRY:

Q. Mr. Davis, directing your attention first to the application here for the establishment of a broadcast station in Dubuque, Iowa, for operation on 1340 kilocycles, with 500 watts power, I will ask you if the granting of that application involves any question of interference, and if so, state the stations, and if
158 not, answer accordingly?—A. There is one station located at less than the average recommended separation for the assignment requested by the Telegraph-Herald. That station is WSPD operating on 1340 kilocycles with one kilowatt at night, and 5 kilowatts until local sunset, at Cleveland, Ohio, about 378 miles from Dubuque, Iowa. The recommended separation for the assignment requested is 400 miles.

In that case I would not expect objectionable interference to occur to the service of WSPD by the operation of the station here proposed, but during the late afternoon hours I would expect there would be some slight limitation within the normally protected .05 millivolt per meter contour of the proposed station.

Q. What have you to say with reference to the present service to Dubuque and the area involved in this application?—A. I think that service has been very well described by Mr. Barron and Mr. Page.

Q. If you concur with them, there is no use in going over that again. What about the proposed site, if it has been testified to sufficiently for you to determine where it is going to be?—A. That has not been definitely specified and therefore, if the appli-

cation be granted, the Engineering Department would recommend that it be subject to the selection of an approved site.

Q. With reference to the equipment, the transmitter, what have you to say?—A. The proposed transmitting equipment is satisfactory, and the antenna proposed by the applicant is also satisfactory.

Q. With reference to the number of stations in Iowa, in order to determine the question under the recent Act of Congress, how many stations are there in Iowa?—A. There are sixteen broadcast stations now assigned to the State or within the State of Iowa.

Q. And the number of stations in continental United States, have you that?—A. That is about 650 broadcast stations in the United States.

Q. With reference to pending applications involving the questions of interference and service, what have you to say?—A. There is one pending application which is pertinent to the consideration of this one, application B-4P-687 from Clinton, Iowa, requesting operation on 1310 kilocycles, 100 watts, unlimited time.

159 Clinton, Iowa, is about 50 miles from Dubuque, and the recommended separation between assignments such as are requested is 58 miles. However, principally due to the difference on the high frequency and the broadcast band, I would expect no interference within their normally protected contours.

Q. Then there are no applications from Dubuque except these two involved here, one of which is to move into Dubuque?—A. There may be others, but none involving interference. Those are the only two involving interference so far as Dubuque is concerned.

Q. Do you have a list of the pending applications about which you have just been interrogated?—A. Yes; I have a list of pending applications from the State of Iowa.

Mr. BERRY. Mr. Examiner, we offer to file that for the convenience of the Examiner as Commission's Exhibit No. 1.

The EXAMINER. That will be admitted in evidence, as Commission's Exhibit No. 1.

(The list referred to was received in evidence and marked, "Commission's Exhibit 1, Dockets 3967 and 4031," and is filed with the transcript in possession of the Commission.)

By Mr. BERRY:

Q. Mr. Davis, directing your attention to the application of Sanders Bros. radio station of East Dubuque, Illinois, does the granting of that application involve any question of interference, and if so state the stations, and the actual and recommended

separations?—A. There is no problem of electrical interference involved in that case, since the actual separations are in excess of those recommended in each instance.

In connection with that, it is also pertinent to note that the request in this application is for removal of just a few miles.

Q. With reference to the same questions I have asked you about the other application, your answers would be the same with reference to those, would it not, as to the stations and the list of stations you have just filed?—A. Yes; insofar as those items are concerned. The antenna proposed by this applicant is satisfactory, so also is the transmitting equipment.

160 The transmitter site, as specified in the application, is to be determined at a later date, and therefore if this application be granted, the Engineering Department would likewise recommend that it be conditional upon the selection of an approved transmitter site.

There are a number of pertinent pending applications which involve questions of interference. However, those applications also involve interference with the present assignment of WKBB.

Those applications are for operation on 1500 kilocycles, and with the following powers from the following towns.

100 watts, unlimited time, Appleton, Wisconsin, 168 miles from East Dubuque;

100 watts, unlimited time, from Oak Park, Illinois, 152 miles from East Dubuque;

100 watts at night, 250 watts until local sunset, unlimited time, from Joliet, Illinois, 150 miles from East Dubuque;

Another one requests 100 watts, unlimited time, Winona, Minnesota, 118 miles from East Dubuque;

And the last one is from Galesburg, Illinois, requesting operation on 100 watts, specified hours, and that is about 110 miles from East Dubuque.

You will notice I have mentioned the distances from East Dubuque in each case, and that is only about two miles distant from Dubuque, Iowa. In each of those cases the recommended separation for operation at night is 180 miles, and if any of these applications were granted I would expect objectionable interference with the present night operating conditions of WKBB and with those as proposed, but no interference during daytime hours.

Q. Do you have the population figures of Dubuque?—A. The 1930 Census population of Dubuque is 41,679.

The EXAMINER. Is that the metropolitan area?

The WITNESS. No, sir; that is the population within the political limits of Dubuque. I do not have a figure on the metropoli-

tan area, since I understand the Census Bureau compiles that only when that area exceeds 100,000 population.

Mr. BERRY. That is all.

The EXAMINER. You may cross-examine.

161 Cross-examination by Mr. ROLLO:

Q. Mr. Davis, can you tell us for the record what is the latest hour and earliest hour of sunset at Dubuque during the year?—A. Will East Dubuque be satisfactory?

Q. Yes.—A. In Central Standard Time the earliest hour is 4:30 p. m., occurring in December, and the latest hour is 7:45 p. m. occurring in June and July. That is accurate within seven and one-half minutes.

Q. I think during your absence from the room Mr. Barron testified he had in mind in his testimony regarding the ultra-high frequency relay stations, a frequency above 30 megacycles. Of this frequencies available for relay work, what in your opinion would be the maximum distance they could be efficiently operated?—A. On those ultra-high frequencies above 30,000 I do not think they would get satisfactory relay service at a distance much greater than five or six miles. There are other bands available in the lower frequencies where greater coverages are available.

Mr. ROLLO. That is all.

Cross-examination by Mr. LOVETT:

Q. On what power are you basing your estimate?—A. The usual relay station signal does not use much more than five or ten watts, and if greater distance coverage than that is desired, those frequencies are not used, there are other frequencies that are available, as I say.

Q. How far would the other frequencies carry?—A. With the power that is ordinarily used and the equipment, they would cover 30 to 40 miles, possibly.

Q. You indicated that there might be objectionable interference from WSPD to the signal of the proposed Telegraph-Herald station in the late afternoon hours?—A. That is right.

Q. Would you state how serious that interference would be, and as to what contour it would curtail the service of the proposed station?—A. Based on the interference curves of the Engineering Division, that would be just slightly in the half
162 millivolt contour. It probably would not extend in the sixth-tenths millivolt contour, and as I say, it would be just slightly within that contour.

Q. Are those curves based on 1,000 kilocycles?—A. No; at such distances it is rather independent of the frequency.

Q. Would not the distance of 30 or 40 miles have an effect on it?—A. It has an effect on the coverage of the station, but does not have an effect on the sky wave then being involved, as compared to a thousand kilocycles.

Q. Is not the estimate which you have made based upon the interference 10 percent of the time?—A. That is based upon interference 10 percent of the daytime hours, is my understanding of it.

Q. During which you think interference would exist at all?—A. Yes; that is the specific basis upon which we discuss the allocation.

Q. If based upon 10 percent, how many minutes during the late afternoon would you say this interference might be expected to occur?—A. That might be rather serious, if we take 10 percent of a 10-hour day, assuming in the fall or spring 600 minutes, 10 percent of that is 60 minutes.

Q. Is there not a greater portion of the day when you are certain there would be no interference whatsoever?—A. There would be no interference of that nature, but if you wish to discuss 10 percent of daytime interference, that would be one thing, and when we discuss 10 percent during the last hour before sunset, that is something else, and the intensity in which it would occur would probably be somewhat higher than I have indicated.

It is a very difficult situation to describe accurately in words. The interference changes rapidly from one value to the other, and it is not quite so simple as the multiplication table.

Q. Will you state whether or not it is a fact that if this interference would occur which you state might occur, it would be limited to a small area?—A. The portion of the total service area would be very small; yes.

Q. It would be a sector of the proposed service area in the direction of Toledo?—A. If we are going to break it up into parts toward Toledo and away from Toledo, we will have to
163 specify some definite values on either side, and it gets down to the point of going into too small detail for the interference involved.

Q. It is not very serious?—A. Within the standards of the department, it is classified as objectionable interference certainly within the half millivolt contour, just what I started out with.

Q. Is your estimate based upon nighttime curves?—A. No; it is not based upon nighttime curves, it is based upon a curve which was believed and is believed to represent conditions as recorded from observations made at the time of the coverage of the stations and in order to give the reasonable protection for the 10 percent of the daytime hours to stations on the same frequency,

and at some distances it is particularly pertinent to adjacent frequencies also.

Q. Is it not an empirical curve?—A. It is an empirical curve, but it is based upon measurement data.

Q. Measurement data as to daytime and as to nighttime?—A. Yes; observations were made both daytime and night in order to determine the various interference curves that were used as a basis for the recommended separations.

Q. And you arrived at an empirical curve for the late afternoon hours?—A. The department did.

Q. What is the nearest station to WKBB which is now operating on 1,500 kilocycles?—A. A station at Muskegon, Michigan, WKBZ, 100 watts night, 250 watts until local sunset, and that is about 225 miles from Dubuque.

Q. To what field intensity do you anticipate this station would limit Station WKBB during daytime?—A. I do not know, but certainly well outside the 2 millivolt contour. I have not calculated it.

Q. Would you calculate that?

Mr. ROLLO. Will not the answer to that question involve antenna efficiency of that station?

Mr. LOVETT. Assume the average efficiency.

Mr. ROLLO. Are you familiar with the antenna efficiency of WKBZ?

The WITNESS. No, sir.

By MR. LOVETT:

Q. I intended for you to use the proposed new antenna of WKBB.—A. That would not have a thing to do with it.
164 That would be a limitation to somewhere outside the half millivolt contour during the daytime, based upon that daytime curve which was used as the basis for the recommended separation table.

Q. You state that the use of a highly efficient antenna which would extend the power would not affect the station?—A. Not appreciably. There again, if we want to go into that, I will have to determine that there is a slight variation in the intensity of WKBZ's signal that would be protected on the side toward Muskegon, and will not be on the side more distant from Muskegon. If you want to go into that, I will be glad to do it for you.

Q. Do you say if they employ a highly efficient antenna, extend their power considerably beyond that which now exists, it would not cause interference in the direction of WKBZ?—A. That would still be outside of the half millivolt contour in the direction toward Muskegon. It would be about 193 miles from Muskegon to that half millivolt contour.

Q. I believe you stated that the Telegraph-Herald application proposed an antenna 185 feet high, which was satisfactory to the Engineering Department?—A. I stated that it was satisfactory. I do not know whether I described it, but that is right, 185 feet.

Q. Will you state whether or not the Commission would permit the Telegraph-Herald to increase that height, that is, the Engineering Department of the Commission?

Mr. ROLLO. I object to that for the reason that it calls for a legal opinion.

The EXAMINER. He cannot answer that question. I think the objection should be sustained.

By Mr. LOVETT:

Q. Is there any limitation upon the height of an antenna which might be installed by the Telegraph-Herald, so far as engineering standards of the Commission are concerned?

The EXAMINER. You can ask him what the minimum height is. The rules provide for that.

The WITNESS. The Commission does have a rule designated as 131, which specifies therein what the minimum vertical height shall be when such station requests new facilities, and the specification in this application is in compliance with the requirements of that rule.

165 By Mr. LOVETT:

Q. Does the rules to which you refer specify any limitation?—A. The minimum limitation only.

Q. There is no maximum limitation?—A. No; according to that rule there is not.

Mr. ROLLO. If the applicant is now proposing an amendment to its application, I move it be denied by default in accordance with the rules of the Commission.

The EXAMINER. There is no likelihood of that, Mr. Rollo.

By Mr. LOVETT:

Q. Now, Mr. Davis, what is the minimum recommended distance at which 100-watt stations should be located in the center of a city?—A. In the center of a city it is sought to serve, it should be in about two miles.

Q. Other conditions being equal, which does the Engineering Department prefer for a transmitter location, fertile bottom land in a valley, or the hilly section?—A. I do not know. We probably would require some more description of that as to size of hills, whether it was 10 feet variation or 600 feet variation, and all that, and I do not think we would have to go into that.

Mr. BERRY. Another question about that is what the Engineering Department might prefer. I do not object to asking any ques-

tions about his engineering, but as to the Engineering Department, he may not know what the Engineering Department would recommend.

Mr. LOVETT. That is all.

The EXAMINER. Are there any further questions?

Mr. BERRY. Yes; I would like to ask this question.

By Mr. BERRY:

Q. Has there not been an announced policy of that kind in the annual reports of the Commission?—A. Yes; we have a publication entitled, "Location of Broadcast Transmitters," I think, and therein I think there is an excellent description of the way to select a transmitter site, or certain guides to the selection of a transmitter site. I think that might have been prepared by Mr. Barron, at one time.

Q. Will you state whether or not WMAQ and WMT are chain stations?—A. They are.

166 Mr. JOHNSTON. I would like to ask just one further question.

By Mr. JOHNSTON:

Q. Is your testimony regarding the interference from WSPD to the proposed Dubuque station on a basis of strict daytime conditions?—A. No; not as I understand your question. The recommended separations which are now published and in use at times were based for daytime separations upon interference during the late afternoon hours, and the characteristics of transmission of radio signals to such points in the broadcast bands vary from day to night, and there is a transcription period which is rather gradual, it is not an abrupt change from day conditions to night conditions, and there is that gradual change during the late afternoon hours, and the figure has been selected based upon a study and observation, to represent what the Commission's Engineering Department believed to be a reasonable figure for interference values at the respective distances, and that information has been published and is readily available to the public. It does not purport to represent noon-day conditions.

Q. What information are you referring to?—A. It is in the various annual reports of the Radio Commission which preceded the Communications Commission, and particularly the sixth annual report, and you will find therein curves of night sky wave field intensity as well as expected daytime field intensity at various distances, so far as the problem of interference is concerned.

Mr. JOHNSTON. That is all.

The EXAMINER. Are there any further questions? The witness may stand aside. The hearing will be recessed at this time until 10 o'clock tomorrow morning.

(Whereupon at 4 p. m. a recess was taken until 10 a. m., Wednesday, September 16th, 1936.)

* * * * *

PROCEEDINGS

The EXAMINER. The hearing will be resumed in the consolidated cases consisting of Dockets 3967 and 4031.

You may proceed, Mr. Rollo, with your next witness.

Mr. ROLLO. I will call Mr. Klauer.

167 Whereupon WALTER E. KLAUER, a witness call on behalf of Station WKBB, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. ROLLO:

Q. Please state your name and where you reside.—A. Walter E. Klauer. Residence, Dubuque, Iowa.

Q. How long have you been a resident of Dubuque?—A. Thirty-seven years.

Q. Are you connected with Sanders Brothers Radio Station, the licensee of Station WKBB at East Dubuque, Illinois?—A. Yes; I am president of the corporation.

Q. Who are the officers and directors of that corporation, besides yourself?—A. Mr. W. H. Klauer, my father, is vice president; Mr. E. A. Deutmeyer is secretary, and Mr. John D. Carpenter is treasurer.

Q. And who are the directors?—A. They are the same.

Q. What is the total authorized stock of the corporation?—A. $40,000.

Q. How much of that is issued?—A. $25,000.

Q. In what manner?—A. 250 shares of common stock of $100 per value.

Q. Is there any preferred stock?—A. None.

Q. How is that 250 shares of common stock owned?—A. All but a few shares are in my name, owned by myself.

Q. What are the shares that are not owned by you?—A. There is one share in the name of each of the other directors, they each own one share.

Q. When did you first commence to operate WKBB?—A. In the fall of 1933.

Q. Was that at the time the station first moved into Dubuque?—A. Yes; it was at the time the first license was granted for operation at East Dubuque.

Q. Did you have control of the corporation at that time?—A. The control of the corporation was in escrow at that time, in my name, under a contract of purchase.

Q. Then you subsequently acquired control, I take it?—A. Yes.

Q. About when did you come into control?—A. The financial part of the contract was completed in July 1934, and that
168 was shortly after the Commission's ruling regarding the transfer went into effect, and it was necessary, as I recall, to get approval of the Commission so that the escrow was not turned over to me until sometime later.

Q. Did you file a request with the Commission for their consent to the transfer to you?—A. Yes; and it was approved.

Q. Will you give us a brief history of the station's assignments since its commencement of operation in East Dubuque up to the present time?—A. The first license provided for specific hours of operation, eight and one-half hours a day, as I recall.

Q. What was the power authorized at that time?—A. 100 watts.

Q. Both day and night?—A. Yes.

Q. And the frequency?—A. 1500 kilocycles.

Q. When was the next change in the assignment?—A. In June 1934 we were granted unlimited time on the same power and same frequency.

Q. Has there been any change since then?—A. In April 1935 we were granted 250 watts daytime power with 100 watts after local sunset.

Q. Is that the present assignment of the station?—A. Yes.

Q. Have you made any improvement in your equipment recently, and if so what are they?—A. Practically all of the equipment has been replaced within the last year. We have installed a new transmitter, all of the speech input equipment and amplifiers, and in fact, the entire transmitting equipment has been replaced within the last year with the exception of a frequency monitor.

Q. When did the new transmitter go into operation, approximately?—A. About six weeks ago.

Q. Where is the station located, the transmitter?—A. One mile east of East Dubuque, Illinois.

Q. Do you have a studio at that place?—A. Yes.

Q. Do you maintain any other studios?—A. Yes; we maintain studios and business offices in the Hotel Julian in Dubuque, Iowa.

The EXAMINER. How long have you had a studio in Dubuque, Iowa?

The WITNESS. Since about February 1934, about two months after we were licensed.

169 By Mr. ROLLO:

Q. I show you what has been marked "WKBB Exhibit No. 13," and ask you to tell us what it is, please.—A. This is a financial statement of Sanders Brothers Radio Station as of August 31, 1936.

Q. Was that statement prepared under your supervision?—A. Yes; prepared by our secretary, Mr. Deutmeyer, and myself.

Q. Are you in a position to state it represents a true picture of the assets and liabilities of the corporation?—A. I am.

Mr. ROLLO. I offer the financial statement in evidence at this time as WKBB Exhibit No. 13.

The EXAMINER. WKBB Exhibit 13 is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 13, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now show you what has been marked "WKBB Exhibit 14," and ask you to describe it.—A. This a profit and loss statement of the operations of WKBB for the 8 months ending August 31, 1936.

Q. Was that prepared by you or under your supervision?—A. Yes, sir.

Q. Is it correct?—A. It is.

Mr. ROLLO. I offer this statement as WKBB Exhibit No. 14, in evidence.

The EXAMINER. WKBB Exhibit 14 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 14, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I show you what has been marked "WKBB Exhibit 15" and ask you to describe it.—A. This is an estimate of the pro-
1570 posed cost, or the cost of our proposed moving to Dubuque, Iowa, and the installation of the necessary equipment.

Q. I notice on the exhibit "Land, $3,000"; is that the estimated purchase price of the land?—A. Yes.

Q. You have on this exhibit an explanatory note, I believe, that you have not yet determined whether you will purchase the land or lease it?—A. That is true.

Q. Was this statement prepared by you?—A. It was.

Mr. ROLLO. At this time I offer in evidence WKBB Exhibit No. 15.

The EXAMINER. WKBB Exhibit 15 is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 15, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. Will you please state how you propose to finance this move at a cost totalling about $15,000?—A. It will be financed from

the revenue of WKBB insofar as that will go, and if that is not sufficient it will be financed by myself.

Q. Are your willing to advance additional funds to the corporation if necessary?—A. I am.

Q. In that connection, will you tell us what your income amounts to from sources other than the radio station?—A. Well, my income from other sources will be in excess of $15,000.

The EXAMINER. How much?

The WITNESS. I said in excess of $15,000 this year.

By Mr. ROLLO:

Q. For the year 1936?—A. Yes.

Q. Is there a principal source of income that you have reference to?—A. Yes; I am connected with other interests in addition to WKBB. I am vice-president of the Klauer-Julian Hotel Corporation which operates the Hotel Julian at Dubuque, Iowa, and I am general manager of the Klauer Manufacturing Company, which is a manufacturing plant owned by our family.

Q. What portion of your time do you devote to the station?—A. Well, I have devoted the first two years the station was in operation, nearly 75 percent of my time to it.

171 Since Mr. Carpenter has joined the organization I have probably been devoting about 50 percent of my time to it.

Q. Would you say you are devoting about half of your time at the present time to the operation of the station, excluding your attendance at this hearing?—A. Yes.

Q. You have heard the testimony that has been given in this hearing heretofore with reference to the Telegraph Herald?—A. Most of it; yes.

Q. Is it correct that the Telegraph Herald is the only daily nonsectarian newspaper in Dubuque?—A. Yes.

Q. Does that newspaper publish the program listings of your station?—A. No; they have never published any program listings of our station.

Q. How do you publicize your program listings?—A. Well, we have had to resort to various methods. We have a local labor paper in Dubuque, that is a weekly of small circulation, and they publish our programs.

The Catholic Daily Tribune publishes some of our programs, but that is a national sectarian paper and has a very small circulation in our territory of Dubuque and Dubuque County.

Q. Do you ever resort to leaflets for publicizing your programs?—A. We do not, but some of the public welfare and human welfare organizations, such as the Community Chest and the Visiting Nurses Association, and some of the charities, sometimes use that method of publicizing their programs, in addi-

tion to occasionally buying space in the Telegraph Herald—that is speaking of the organizations but we have never bought any space in the Telegraph Herald ourselves.

Q. Does the Telegraph Herald publicize the civic or charitable programs of your station?—A. The Telegraph Herald has never printed a line about WKBB in its columns, of programs of any kind.

The EXAMINER. Have you ever bought space for your station in the Telegraph Herald?

The WITNESS. No; we have not, but some of the organizations have. I have offered to buy space for them, but they have never allowed me to do it.

172 By Mr. ROLLO:

Q. I show you what has been marked "WKBB Exhibit No. 16," and ask you if that is such a leaflet as has been used to publicize your program, and if that is typical of such leaflet.—A. Yes; this is one that was used by the Community Chest in connection with their program last October, I believe.

Mr. ROLLO. I offer this in evidence as WKBB Exhibit No. 16.

The EXAMINER. WKBB Exhibit 16 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 16, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. Did you state whether or not you have ever requested the newspaper to list your programs?—A. No; I have never requested the Telegraph Herald to list our programs; I knew it would be useless.

The EXAMINER. Why not?

The WITNESS. I knew it would be useless, because in the beginning they refused to take paid advertising mentioning the radio station when it first went on the air. They refused to allow one of our clients that had a radio program—they refused to allow him to mention his radio program in his paid display ad.

Mr. LOVETT. I object to that as hearsay testimony, your Honor.

The EXAMINER. He can develop how he found it out. Do you deny that is true?

Mr. LOVETT. Yes; I do.

Mr. BERRY. I would like to make this inquiry for my own information. Counsel, is the position taken there is any obligation on one competitor to advertise the business of another competitor?

Mr. ROLLO. The purpose of this evidence is to show the lack of support that has been given the existing radio station in the community by the existing daily newspaper. That is the sole purpose of the testimony.

The EXAMINER. Go ahead with the examination.

173 By Mr. ROLLO:

Q. Have there been any other incidents besides the one you have just mentioned which have influenced your decision not to ask the Telegraph Herald to list your programs?—A. Well, at the time KWBB went on the air at East Dubuque, and for a few months afterwards, as I recall, the Telegraph Herald was not carrying any radio programs, they had discontinued that sometime before, and it was some months after we went on the air that they began listing radio programs again, and when they did, they listed only the programs of the major networks.

Q. What are your activities in civic affairs in the community as an individual, Mr. Klauer?—A. Well, I try to get behind everything I think is for the welfare of the community.

Mr. LOVETT. I object to that statement generally, I think he should be more specific.

By Mr. ROLLO:

Q. Are you active in the Chamber of Commerce of Dubuque?—A. Somewhat so; yes. I attend the meetings of the committees when I am called; that is, of the committees on which I have been placed or asked to serve.

Q. Is that activity at the present time as extensive as it has been heretofore?—A. No; it is not.

Q. Can you explain that?—A. Well, about a month after WKBB went on the air I was dropped from the committees I had been on previous to that time.

Q. Who was the head of the Chamber of Commerce at that time?—A. Mr. Woodward of the Telegraph Herald.

Q. You have heard some testimony with reference to the weekly agricultural activity and county agent programs proposed by the Telegraph Herald; have you had any experience over WKBB with that type of program, and if so explain your experience, please.—A. Yes; since the inception of WKBB we have been running agricultural programs regularly using material furnished by the State Agricultural College at Ames, Iowa, and from the Agricultural Department of the University of Wisconsin, and from the University of Illinois.

Last fall, just about a year ago now, we endeavored to localize that program by having the county agents of eight
174 surrounding counties come to the studio in rotation, two each week, to present programs prepared by themselves.

That program was started, or rather that arrangement was made, through Mr. Frank Carrigan and with his assistance.

Q. Who is Mr. Frank Carrigan?—A. He is the Dubuque County agricultural agent. We had considerable difficulty in making those arrangements.

Q. How long was that program carried?—A. It was carried about six months, carried until February or March, as I recall.

Q. Was that program successful?—A. It was successful while these agricultural agents would come to Dubuque to give the programs, but for various reasons they failed to show up for the program because they busy, and we could schedule the program, and then would have to change our schedule. Some of them would come perhaps an hour late for the program and they seemed to lose interest in it after a time, particularly around last February; but, of course, that was probably due to weather conditions at that time, as we had a pretty severe winter out there and it was quite a job to drive 40 or 50 miles to put on a program.

Q. Was that irregular attendance the cause for your discontinuing that particular feature?—A. Partly so. Since that time Mr. Carrigan has continued to give one program a week.

Mr. ROLLO. I think that is all on direct.

The EXAMINER. What is the nature of that program?

The WITNESS. That is a program prepared by himself. It is a daily program, but Mr. Carrigan presents it once a week.

By Mr. ROLLO:

Q. You haven't a copy of it?—A. Mr. Carpenter will testify regarding that program. This other I mentioned was before Mr. Carpenter came.

Mr. ROLLO. That is all.

The EXAMINER. You may cross-examine.

175 Cross-examination by Mr. LOVETT:

Q. Mr. Klauer, I believe you said the station was purchased by you pursuant to an escrow agreement?—A. Yes.

Q. What did that agreement provide; I don't mean the amount necessarily, but the other provisions?—A. It provided for the stock of the corporation to be placed in escrow in the First National Bank of Cicero, Illinois, and provided for certain payments to be made thereon.

Q. That was in connection with the move to East Dubuque?—A. I don't understand.

Q. It was formerly in Joliet, just before this agreement took place?—A. The agreement was made after the station had moved to Dubuque.

Q. You say it was made after the move?—A. Yes; after the construction permit had been granted.

Q. The negotiations were had prior thereto, were they not?—A. The negotiations were had not only concerning this station but concerning another station. For several years prior to that time I was interested in bringing a radio service to Dubuque. Before 1933 I had negotiated with the owners of a station up in Decorah, Iowa, with the idea of bringing that station to Dubuque.

Q. You have indicated that this cost of the proposed move and the new equipment necessary will approximate $15,000. Do you intend to pay for that entirely out of your own earnings and the earnings of the station?—A. Yes; this estimate may be a little high in some particulars, but it has been my experience that the cost of this sort of thing usually goes over your estimate. In any event I am prepared to stand that charge.

Q. Do you have any assets other than your current income which you mentioned would be $15,000 per year?—A. Yes.

Q. Approximately what does that consist of?—A. I own some securities.

Q. What would be the total value?—A. Well, I would say that I could produce assets, securities, and equities in excess of a hundred thousand dollars if necessary.

Q. That is also in excess of liabilities?—A. Yes; these are my personal assets.

176 Q. You stated that there were several county agent programs, two weekly, I believe, scheduled for a period of six months. Can you tell what counties that was?—A. Yes; in addition to the counties we have been discussing here—you want me to enumerate them?

Q. Yes, if you will; with the names of the agents.—A. I don't recall the names of the agents, as this was arranged pretty much through Mr. Carrigan, and he got these men together and brought them to the studio, and it was also arranged with our program director. I met the gentlemen at the time, but I don't remember the names.

In addition to the counties mentioned were Grant County, Wisconsin, and Jo Daviess County, Illinois, which I believe have been mentioned; Carroll County was also included. In Iowa there was Dubuque, Jackson, Jones, Clayton. I think that is eight. Delaware County was included in that, too.

Q. They would rotate two each week?—A. Yes; they were to rotate two each week and they did; they all came several times.

Q. How long have you been intimately connected with this station, ever since the move to East Dubuque?—A. Yes; ever

since the move to East Dubuque I have been directing the operations.

Q. Do you know whether or not they have carried programs of the Black & White Orchestra at any time?—A. I don't know whether they carried programs of that orchestra under that name. These local orchestras around Dubuque keep changing their names and also their personnel shifts back and forth among the orchestras, and in many cases the same musicians would be playing in various orchestras under different leaders and different names.

Q. How about the Columbia College Vested Male Choir?—A. We have never carried from our studio the Columbia College Vested Male Choir. We have carried programs in connection with Columbia College activities up at Columbia College in which the choir participated.

Q. How often has that been done?—A. Three or four times, I believe.

Q. Within the period of four years?—A. Oh, yes; I personally called on and contacted Father Dress, the director of that choir, when the station went on the air and asked him to co-
177 operate with us, that we would be very glad to broadcast the choir at any time he would make them available.

Q. And it has been done about three or four times?—A. Yes; because Father Dress did not seem to be enthusiastic about it and told me the choir was not in shape to broadcast at that time.

Q. How about the University of Dubuque mixed choir; has that been carried?—A. Yes; they have been to our studio many times.

Q. When was the last time?—A. I think that will appear in Mr. Carpenter's testimony. He will testify regarding the programs.

Q. Has it been there three or four times a year?—A. Yes. I would not say the entire choir three or four times a year, but various groups from that choir.

Mr. Rollo. While I have no objection to this line of questioning, yet in order to save time I will call attention of counsel to the fact that the program director will be put on the stand to testify about the programs.

Mr. Lovett. That will be during the time he has been manager of the station, which is only during this year, I believe, and that is the reason I desire to ask questions of this witness. I do not care to go into the present program with this witness.

The Examiner. That is all right, to go into the question of programs; but it would be better to go into it with somebody who is familiar with it, or at least not with every witness who goes on the stand.

Mr. LOVETT. Mr. Carpenter, as I understand, is not familiar with the programs prior to this year.

Mr. BOLLO. Mr. Carpenter came with the station in March or April of this year, I believe, but he has of course made a complete study of prior programs.

The EXAMINER. Well, go ahead.

By Mr. LOVETT:

Q. Has the Wartburg Theological Seminary male choir appeared over WKBB?—A. I can't tell you.

Q. Has the Columbia Academy glee club?—A. We have had a great number of programs from Columbia College and various talent from there, and I don't recall whether the organization was under that particular name.

178 Q. Have you carried programs of Virginia Barrett and Mrs. Barrett, to your knowledge?—A. No; I could not say whether we have or not.

Q. How about Eugenia Bollis?—A. I am afraid I could not say. I cannot testify to all of the talent we have had on, because I do not take direct charge of the talent.

Q. How about the Dubuque Band Academy?—A. The Dubuque Band Academy is a commercial organization.

Q. Have you ever carried their programs?—A. From there?

Q. From there or from their organization?—A. We have had a lot of programs from their talent; yes.

Q. Sustaining programs?—A. From people who belonged to the Dubuque Band Academy, various groups.

Q. Sustaining programs or sponsored programs?—A. They would be mostly sustaining programs.

Q. Have you had programs produced by the Dubuque Academy of Music?—A. Not produced by that organization particularly. That is a school of music.

Q. It is Dr. Klein's school.—A. Yes; but a great many of his pupils and graduates have participated in our programs.

Q. Have you ever had programs listed by the Schroeder Conservatory?—A. Mr. Schroeder has produced programs at our station many times. I am speaking of Mr. Schroeder the violinist, if that is the man you have reference to.

Q. Professor Schroeder.—A. I don't know whether he calls himself Professor Schroeder, but he is a very good violinist, the man I have reference to.

Q. From what territory have you been drawing your talent?—A. We have been drawing our talent from Dubuque and the surrounding territory over a radius of approximately 40 miles.

Q. Have you had any talent from Galena?—A. Yes.

Q. What talent from Galena; do you recall?—A. A number of small orchestras and soloists.

Q. And Platteville?—A. Yes; we have a good deal of talent from Platteville.

Q. And Lancaster?—A. Yes.

Q. What about Stockton?—A. Stockton, I don't know; I do remember the others very well.

179 Q. Are you broadcasting any programs for the superintendent of schools of Jo Daviess County?—A. I believe the superintendent of schools of Jo Daviess County—no, I am not sure whether it was the superintendent of schools of Jo Daviess County or of East Dubuque, who has put on various programs up there from the East Dubuque studio.

Q. How many times have they appeared, if you recall?—A. I could not tell you that.

Q. Once or twice a year?—A. I could not say.

Q. How about the superintendent of schools at Galena?—A. Most of the arrangements for these programs were handled by the man I had in charge of the program department at the time, and I do not profess to be familiar with every program that was put on that station.

Q. You were studio manager at the time?—A. I was directing the operation of the station, and also putting in most of my time soliciting advertising and activities of that nature.

Q. Speaking of advertising, do you carry any advertising accounts from Galena?—A. We have had some advertising accounts from Galena; yes.

Q. Are you carrying it now?—A. Not now.

Q. How about Cuba City?—A. I do not recall that we ever had any from Cuba City. We have had a number from Platteville, however.

Q. Will you state whether or not the police cars of Dubuque are equipped with radio receiving sets, or the sheriff's cars of that county?—A. I believe the sheriff's cars are, but I do not believe the police cars are equipped with radio.

Q. Did WKBB equip them?—A. The sheriff's cars?

Q. Yes.—A. If they are equipped, we have not equipped any of them.

Q. Do you provide any 18-hour service or 24-hour service, or what kind of service do you provide?—A. Our broadcast day begins at 7 in the morning and ends at 11 p. m.

Q. It is not available for broadcasting after that time?—A. No.

Q. Your station is affiliated, I believe, with the A. B. C. network?—A. Yes.

Q. When did it join that network?—A. When the network started, I believe it was in April of this year.

Q. Do you carry the full complement of their programs?—A. No.

180 Q. That is a service for which you pay, I believe?—A. In the beginning it was a service for which we did not pay, but when it lasted two months then it is a service for which we are paying, and we are paying a sustaining fee of $325 a month for that service now.

Mr. LOVETT. I believe that is all.

Mr. JOHNSTON. I have no questions.

The EXAMINER. Mr. Berry, have you any questions?

Mr. BERRY. Yes; I have a few.

The EXAMINER. You may proceed.

Cross-examination by Mr. BERRY:

Q. This station was established, I believe, in 1933?—A. Yes, sir.

Q. It moved from what place?—A: Joliet, Illinois.

Q. I believe you stated that you were a native of Dubuque, or are you a native of Dubuque?—A. Yes, sir; I am.

Q. What has been the practice of the station, so as to get it correctly before me, about advertising the newspapers in your territory?—A. Advertising in the newspapers?

Q. No; advertising the newspaper, do you make any announcement about what newspapers circulate and such?—A. No; we do not.

Q. I did not quite understand what you said about your withdrawal from the Chamber of Commerce, what was that, you said you had been an active member?—A. Yes; and I was suddenly dropped in January 1934. When the committees of the Chamber of Commerce are usually appointed for the year it has always been the practice to put everybody on a number of committees, all of the members, so that they can serve on various committees, and my name did not appear on any of them, although I was a member. That was a month after I became affiliated with WKBB. Mr. Woodward of the Telegraph Herald was president of the Chamber of Commerce at that time. It made it very difficult for me——

Q. I just wanted to know——

The EXAMINER. Let him go ahead and answer that. What was it you were going to say?

The WITNESS. The fact that my name was not on any of the committees made it difficult for me to participate in a lot of the civic activities of the city.

181 By Mr. BERRY:

Q. Do you know why you were dropped?—A. I cannot prove it; no.

Q. Do you have any difficulty in securing sufficient talent to put on the programs?—A. No; we hold auditions twice a week and continually advertise for talent—shopt for it.

Last winter, from early fall until this spring, we carried on a program called "Talent Quest" from the stage of one of the theatres, and tried to draw talent in that way. We had a wealth of talent in the beginning when the station was first put on the air, but they have lost interest.

Q. That was when enthusiasm was high over the advent of the new facility?—A. Yes; and the novelty has worn off.

Q. Has there been any change in conditions at East Dubuque during the period you have been there; have the business or commercial activities of that locality been circumscribed in any way, or are they about normal; about like they were when you moved there?—A. In East Dubuque?

Q. Yes.—A. A number of establishments have opened their doors and taken out licenses since we have been there.

Q. You mean by that some that were closed are opening up?—A. Yes.

Q. And other businesses opening up?—A. Yes.

Q. And other businesses opening up?—A. It is all liquor business, however. I might explain there is no private sale by the drink of liquor in Iowa, that is prohibited; and Illinois has over-the-bar sale, so that East Dubuque has developed a rather bright district for a couple of blocks.

The EXAMINER. Is that patronized by the citizens of the State of Iowa?

The WITNESS. I am afraid so; some of them.

By Mr. BERRY:

Q. All of this business goes to make up your community and carry the tax burden and build roads, highways, and so forth?—A. Yes, sir.

Q. Has business improved since you have been in East Dubuque?—A. In general?

Q. Yes; in general, around over the section you serve.—A. In East Dubuque, or do you mean the entire territory?

Q. In the territory.—A. In the territory business has improved quite a bit.

182 Q. What would be the difference in your service if you are granted your application to move, what would be the difference in what you propose and what you are rendering now?—A. From what standpoint, the standpoint of programs or what?

Q. Public service or private service, for the benefit of the station or for the benefit of the public, I just want to know what you propose to enlarge upon.—A. I am quite confident we can get more

cooperation from some of the people we have been speaking about, these county agricultural agents, if we can cover the territory more thoroughly. If we increase our service area somewhat I think we can draw more talent from that territory, because they will be able to hear the station better. We have drawn talent 40 or 50 miles away, and they heard the station was there, and they could pick it up once in a while.

Q. That is rural talent?—A. Yes.

Q. You do cover Dubuque fairly well now?—A. Yes; the City of Dubuque.

Q. Do you draw the principal part of your talent from Dubuque?—A. Yes.

Q. I believe you stated in a general way the nature of that talent.—A. Yes.

Q. What would be your plan so far as agricultural interests are concerned if you move; that is, will they be enlarged or be the same as you are carrying now?—A. They will be similar to what we are carrying now.

Q. Just very briefly, the territory surrounding Dubuque on both sides of the river east and west of the City of Dubuque is surrounded by agricultural sections?—A. Yes; and there is some mining in Illinois, and in Wisconsin considerable mining.

Q. Are those mines prospective advertisers?—A. No.

Q. Do you carry the stock-market reports, and so forth, over your station?—A. No.

Q. Or do you propose to?—A. No; I made a number of attempts to establish a local market. I went to Swift & Company, who have a branch buying plant there, where they buy poultry and eggs, and tried to get them to give us market prices that we could quote, and we also went to the Dubuque Packing
183 Company and tried to establish a local market in that way, but they did not want a local market established, and therefore we have no local prices.

Q. Do you happen to know where prices are fixed; doesn't Chicago fix the prices of livestock and poultry for all of the United States?—A. Yes.

Q. Those prices are carried over the Chicago stations, are they not?—A. Yes.

Q. That is, hogs, cattle, sheep, and so forth?—A. Yes.

Q. All of that country, or a great portion of it, is a feeder into Chicago for the livestock market, except when you get down to Kansas City, then the Kansas City market takes care of that?—A. Yes; that is correct. We have one local packing plant that kills hogs in Dubuque. We tried to get them to establish a local market, but they will not do it.

Q. Does that also apply to your eggs, chickens, and small produce?—A. Swift & Company sets the price of those.

Q. I take it that price, if you know, is the price in your place plus the freight to Chicago; is that about the way it is fixed?—A. That is about the way it was explained to me.

Q. Do you know whether either of these newspapers carry those livestock and produce markets?—A. I believe the Telegraph Herald carries a condensed stock-market report in the evening. That is the Board of Trade, or rather the New York Stock Exchange, and also the grain prices.

Q. I was not speaking of stocks and bonds, but of livestock, poultry, and so forth.—A. I have seen some prices, but I don't know whether they are Chicago prices, however, I have never seen any Dubuque prices.

Q. Those local houses then did not cooperate with you to help you disseminate knowledge as to what the local markets are; that is, Swift & Company and the other packing company?—A. They told us very frankly that they would rather we did not attempt it.

Q. They did not want the farmers to know what their stock was worth?—A. They did not want several different price quotations, as that seemed to disturb the farmers.

Mr. Berge. That is all I have.

Mr. Rollo. I have a few more questions I would like to ask.

The Examiner. You may proceed.

184 Redirect examination by Mr. Rollo:

Q. Mr. Klauer, do you carry liquor advertising over WKBB?—A. No; we have never carried any at all; we have refused all liquor advertising.

Q. Do you know whether it is legal to advertise liquor in the State of Illinois?

Mr. Lovett. I object to that as a matter of law.

The Examiner. Yes; that is a question of law, and the objection will be sustained.

By Mr. Rollo:

Q. What is the policy of your station with reference to cooperation on civic, charitable, and religious matters?—A. Our announced policy from the time WKBB went on the air out there, and I made a number of announcements on this myself, has been that the station is open to anything of a public-service nature.

We have attempted to cooperate with every civic activity, every charitable activity, and I would not say every religious activity, but we have opened the station to a number of special events that took a great deal of time. We have invited practically, I think, every clergyman in Dubuque to come and use the station.

Q. Are these facilities made available free of charge to those organizations?—A. Yes; in every instance.

Mr. Rollo. That is all.

The Examiner. I wanted to ask the witness some questions.

By the EXAMINER:

Q. I do not know whether I understood correctly, do you live in Dubuque, Iowa?—A. Yes, sir.

Q. How long have you lived in the City of Dubuque?—A. I am a native of Dubuque; I am 37 years old.

Q. How long have you been a member of the Chamber of Commerce?—A. From about 1923.

Q. Have you ever held any office except on the committees in the Chamber of Commerce?—A. No.

Q. When were your first placed on committees in the Chamber of Commerce?—A. Immediately when I became a member.

185 Q. What committees, do you remember any of them?—A. Yes; I have served on the convention committee, being in the hotel business, as they usually try to place you in connection with something you know about, and for a long time I was on the airport committee. Those are the two committees I have done the most work on.

Q. You served steadily on those committees until you were dropped recently?—A. I have been reinstated again and my name appeared on some of the committees last year, 1935.

Q. You were on committees up to 1934, or including 1935?—A. Up to 1934, and up to the time the station opened in East Dubuque, then I was dropped from all committees for that year.

Q. Who was president of the Chamber of Commerce at that time?—A. Mr. Woodward of the Telegraph-Herald was president of the Chamber of Commerce at that time.

Q. He was president of the Chamber of Commerce at the time you were dropped from these committees?—A. Yes, sir.

Q. How long were you off of these committees?—A. Until 1935.

Q. Is he still president of the Chamber of Commerce?—A. No; he is not.

Q. When did he cease to be president?—A. January 1, 1935—I don't know whether it was January 1st, but it was the year 1935. As I recall the Chamber has their only general meeting shortly after the 1st of January, early in the year.

Q. Then who was elected president of the Chamber of Commerce?—A. The president of the Key City Gas Company, Mr. Charles McLain.

Q. Then your name again appeared on the committees?—A. Yes, after that.

Q. But during the presidency of Mr. Woodward, who is connected with the Telegraph-Herald, you were not on those committees?—A. My name did not appear on any committees in 1935. He was president for two years, as I recall it.

Q. Can you tell of any other act of the Telegraph-Herald which would indicate their attitude toward or opposition toward

your station, any public act?—A. Yes; I can tell some of them.

186 Q. Of your own knowledge?—A. Of my own knowledge; yes.

Q. I am talking about the newspaper now, that is the applicant here for another station.—A. Yes, sir. The attitude of the Telegraph-Herald has been very inimical to me.

Q. What do you mean by that?—A. I will give you one example. A year ago last spring I was approached by the playground or recreation director of the City of Dubuque who asked me to sponsor a baseball team in the Industrial League. Dubuque has no league baseball, so they have this Industrial League which is sponsored by various business organizations, each one sponsoring a team. The cost would have been in the neighborhood of $200 or a little over to supply the uniforms and equipment. This man came to me two days later and apologized and said he was sorry we would not be allowed to sponsor a team because the Telegraph-Herald objected to it.

Q. Did they sponsor a team?—A. No.

Q. Did anybody else sponsor a team there?—A. From the newspaper?

Q. No; I mean in the town.—A. Yes; there are six or eight teams in this Indnstrial League, which is a sort of semipro league.

Q. You say you never offered to buy any space in the Telegraph-Herald; do you know what that space would cost if you could buy it?—A. I assume we would pay the regular rate; and assuming that, I know about what it would cost. I think their rate is $1.12 an inch.

Q. There is no other daily paper there of a similar type besides this newspaper?—A. No; there is no other daily paper except the Catholic Tribune, and that is a national paper. There is no other daily paper in Dubuque.

Q. Is there a county paper there, or a weekly paper?—A. There are some weekly papers out in the county in the small towns like Cascade and Barrettsville, but they have no circulation in Dubuque.

Q. How much of the time of the station is given over to free service to civic, educational, and patriotic organizations?—A. I cannot give you the exact percentage.

Q. Your program director will give all of that?—A. Yes; he will be able to give all of that.

187 Q. Have you ever refused time to any civic organization or any church organization?—A. Never.

Q. Your station has been open at all times to all of these organizations if they desire to use the service?—A. Yes, sir.

Q. Have you ever had any remote control connections to any of the churches or such organizations?—A. Yes; we have had remote-control service to Columbia College for religious services up there of a special nature, some sort of religious convention, I don't remember exactly the name of it. We have had no remote church pick-up, but we have a regular program every Sunday morning that is conducted by the Dubuque Ministerial Association, a half-hour program every Sunday.

Q. How many people are in your sales force for selling advertising?—A. There were four of us selling advertising, including Mr. Carpenter and myself.

Q. You do some selling yourself?—A. Yes.

Q. During your process of sales of the service, have you run on to any kind of comparative rates between your station and the Telegraph Herald where advantages have been given prospective advertisers if they would not advertise over the radio?—A. Yes; I have run into that. That did not last very long, though.

Q. I notice you have an item here on your expense or profit-and-loss statement of news service $1,143.77, what news service have you?—A. That is Trans-Radio and Press Radio service.

Q. What is their source of news?—A. I am not familiar with their sources of news, but I imagine they have correspondents.

Q. What type of news do they supply?—A. They supply us with news of a national character.

Q. Ordinary news of a national or state interest is it?—A. Yes.

Q. How do you get your local news?—A. From time to time we have had news reporters, one of the staff who went around to the principal sources of news, and we have a news reporter at the present time, a local news reporter.

Q. Who does not do anything else but that?—A. Yes; he has some other duties, he edits the news that comes in over the teletype ticker from Trans-Radio.

188 Q. I mean that is his principal business?—A. Yes; that is his business.

Q. From the fact that your station is located primarily in East Dubuque, will you state whether or not there has been any prejudice shown by the people of Dubuque as a community against the station?—A. No; not as a community. The people of Dubuque, I think most of them consider it a Dubuque station. That——

Q. What sort of studio do you maintain in Dubuque, Iowa?—A. We have a studio and business office on the mezzanine floor of the Hotel Julian, one studio that is about the dimensions of this room.

Q. Just give an estimate of the square feet.—A. It is about as long as this room and as wide, maybe 20 or 25 feet by 18

feet. We have another room we use partly as an office, and convert into a studio when we have a large band or choir, probably half again as large as the studio room. Then we have a small studio for talks, and that is where the input equipment is located.

Q. Do you have an auditorium there?—A. We have the use of the ballroom of the hotel for an auditorium, and we have used it for an auditorium when we have put on programs of certain types where we invite an audience to attend. The room would seat about 500 people.

Q. These rooms there are all soundproofed in your studio, that is to say, it is a modern studio?—A. Yes; the walls are insulated with Insulite.

The EXAMINER. I believe that is all.

By Mr. LOVETT:

Q. Are the studios acoustically treated?—A. No; that is, not by any commercial outfit.

Q. How about the studio in East Dubuque, will you tell us of what that consists?—A. Yes. The building includes living quarters for the operator, first of all, a combined kitchen and dining room.

Q. I am not interested in that, I mean the studio in East Dubuque, that is the main studio, is it not?—A. Yes. We have a transmitter room housing the transmitter, which is approximately 10 by 12 or a little larger and, of course, you understand these are not exact dimensions.

The EXAMINER. Is there a toll bridge at Dubuque across the river there?

189 The WITNESS. Yes, sir.

The EXAMINER. That accommodates automobiles and that type of traffic?

The WITNESS. Yes, sir.

By Mr. LOVETT:

Q. The studio itself is what I was asking about.—A. We have two studio rooms there. We have a studio room that is approximately 12 or 14 by 15 to 18 feet, I don't know the exact dimensions. Then adjoining that we have another room which we have converted into a studio at times, if necessary, which is considerably larger, about half again as large.

Q. Are those studios used regularly?—A. They were used a great deal in the beginning—you mean for live talent?

Q. Yes; or for any purpose.—A. They are used for producing over 50 percent of our local programs.

Q. That is in East Dubuque?—A. Yes.

Q. The local programs, does that include transcriptions?—A. Yes, indeed.

Q. That is where you have the turntables?—A. We have double turntables at both studios.

Q. The majority of those programs originate in the East Dubuque studio, is that right?—A. Yes.

Q. Are the East Dubuque studios acoustically treated?—A. They are treated with Celotex, I believe, but not anything fancy.

Q. They are not as well equipped as the ones over in the hotel?—A. I would say they are about as modern as the hotel studios. They were put in at the same time, but they do not look like the N. B. C. studios or anything like that.

Q. Are the studios in East Dubuque accessible?—A. No; they are very inaccessible at times. There have been times in the winter when we had to climb up the hill when the road was blocked, and that is the reason for putting studios in Dubuque, because talent would not come over there to the studios.

Q. Then that studio in Dubuque was put in for the convenience of talent?—A. Yes; it was put in for the convenience of talent.

Q. Getting back to the Chamber of Commerce, is it not a fact that the various appointments for the committees are
190 recommended by the secretary to the board?—A. I don't know, I have never been a director of the Chamber of Commerce.

Q. You said that you were out for a period of one of the two years Mr. Woodward was president. Is that correct?—A. Yes.

The EXAMINER. Was that the year you commenced with the station?

The WITNESS. Is was the year after that, it was the year 1934.

The EXAMINER. When did you commence your radio activities?

The WITNESS. In December of 1933.

By Mr. LOVETT:

Q. You mentioned, I believe, in answer to one of Mr. Berry's questions that you broadcast a "Talent Quest" program.—A. Yes.

Q. Is that the program that was sponsored by the Grand Hotel Corporation?—A. Hotel corporation?

Q. The Grand Theatre Corporation, I mean.—A. It was sponsored in part by the Grand Theatre: yes. They offered prizes on it and they paid the prizes and the line charges to their theatre. In other words, they paid part of the expenses.

Q. And they developed the program also?—A. No; we helped develop the program, we had all of the auditions at our studios and helped develop the talent to go on the program.

Q. It was what you would call a sponsored program?—A. No; it was not what I would call a sponsored program, because we did not get our full time rates out of it.

Q. You did not lose money on it?—A. Well, it cost us money, but I would not consider it a loss as we were trying to develop talent.

Q. How long did that program continue?—A. It was half an hour every week and ran, as I recall, from early in the fall until late in the spring, until what they call the summer season comes on.

Mr. LOVETT. That is all.

Mr. BERRY. Mr. Examiner, I think I inadvertently led the witness into an inaccurate statement relative to the local
191 prices on livestock, when I suggested that the local price was fixed as the Chicago price plus the freight from the local point from which it moved. I should have suggested that the local price is generally quoted as the Chicago price less the freight from the point of origin to Chicago. I think the witness answered incorrectly, because I think the local buyer would pay less.

The WITNESS. Yes; I think it would be less there.

By Mr. BERRY:

Q. That is, less a proportion of the freight?—A. Yes.

Q. As I understand the way these markets are fixed the local seller pays a part of the freight, whether it ever moves out of his town or not, because of the fact they fix the rates in Chicago, and the local buyers pay the price that they fix, and charge that fellow with the freight, whether it ever goes out of the local town or not. I know that is the way they do down in our country, and I did not want the record to show we were both mistaken about it.—A. Yes; I think you are correct.

The EXAMINER. I have one or two further questions.

By the EXAMINER:

Q. I notice here on your profit and loss statement that you had a deficit at the close of business December 1935 of $4,165.85.—A. A surplus deficit.

Q. I assume that is made up from surpluses?—A. It is made up of losses. The station has not shown a profit to date.

Q. The surplus deficit up until the 31st of August this year was $475.—A. Yes, sir.

Q. In other words, there has been a considerable improvement in your earnings in the last year?—A. Yes, sir; we have made a much better showing this last year.

Q. How long have you had that studio in Dubuque, Iowa?—A. We put it in almost immediately after we opened in East Dubuque, within two months after we opened we put that in.

Q. How do you account for this decided financial improvement in your income?—A. Of course, we depend largely upon the retail business in Dubuque for our advertising revenue, and the retail business has improved very much in the last three years.

192 Q. And that is reflected in your earnings?—A. That is reflected in the advertising these people do.

Mr. ROLLO. May I ask another question?

The EXAMINER. Yes.

By Mr. ROLLO:

Q. In connection with the East Dubuque studio, I believe you testified you broadcast a majority of the locally originating programs from that studio. Is that correct?—A. Yes.

Q. In addition to that, about what percentage of your station announcements do you make from that studio?—A. Practically all of them.

Q. Do you intend to continue your East Dubuque station should this application be granted?—A. No.

By the EXAMINER:

Q. How are you going to serve those people over there?—A. We are moving only about two and a half miles directly across the river, and I think East Dubuque will have better service than they have now.

Q. But they will not have a studio?—A. They will not have a studio, but they have not used it much anyway.

Q. Do you know what it costs you to maintain the studio in East Dubuque as compared with Dubuque?—A. We feel from our experience we could operate much more economically if we did not have to maintain two studios and have to carry the announcers to both places. We have an announcer living at the East Dubuque studios, but there is also a great deal of running back and forth, and transportation to be paid for in addition to the toll across the bridge, and the toll is 25 cents a roundtrip for an automobile. Our bridge toll bill has run as high as $30 a month and more.

Q. Can you tell me what percentage of your income originates in Dubuque, Iowa?—A. As compared to East Dubuque?

Q. What percentage of your total?—A. I am afraid I cannot give you that figure. It would be the difference between our local advertising and our national advertising, and it would be in the neighborhood of 85 to 90 percent, I would say offhand, average.

Q. That is the local advertising?—A. Yes; the local advertising, and practically all of it originates in Dubuque.

193 We have no accounts from East Dubuque, there are not any acceptable accounts in East Dubuque.

The EXAMINER. All right, you may stand aside. Call your next witness.

Mr. ROLLO. I will call Mr. Carpenter.

Whereupon JAMES D. CARPENTER, a witness called on behalf of Station WKBB, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. ROLLO:

Q. State your name and residence.—A. James D. Carpenter, Dubuque, Iowa.

Q. Are you connected with the licensee of Station WKBB?—A. Yes; I am the treasurer of the corporation and general manager of the radio station.

Q. How long have you been with the station?—A. Since March 28th of this year.

Q. Will you state what experience you have had in radio prior to becoming associated with WKBB?—A. My experience in radio goes back for a period of 10 years. From the period of 1922 to 1928, and I mention that only because the last two years of it are significant from a radio angle, but from 1922 to 1928 I was connected with the Caldwell-Baker Advertising Company of Indianapolis, vice president of the organization, in charge of their accounts.

I established a radio department there in 1926, serving accounts in the Indianapolis territory, following which in 1928 I was with Radio Station WKBF, in Indianapolis, which is now Station WIRE.

I started there as continuity director and chief announcer, then became program director, assistant manager, and for the last two years of my connection there I was the general Manager of that station.

From 1933 in the fall to March 28th of 1936 I was midwestern and southern field manager for the Radio Transcription Company of America, where I was in contact with some 250 radio stations in portions of 21 states from North Dakota to Florida.

Q. From the Mid-western and Southern Sales Company you came to WKBB?—A. I came from the Radio Transcription Company of America to WKBB.

194 Q. What are your duties at WKBB?—A. Well, the duties of almost any general manager of a small radio station. And in addition to general supervision I am in charge of the employment of all of the employees, and I have, naturally, the sales direction of the organization.

Q. Are you also familiar with the programs?—A. Very definitely so.

Q. I show you what has been marked WKBB Exhibit No. 16, and ask you to tell us what it is, please.—A. This is a copy of the WKBB personnel which is employed regularly weekly by the station; that is, they appear as the weekly personnel of Station WKBB.

Q. Does the exhibit also show the duties of the personnel?—A. Yes; but of course there are other duties not shown, but these are the main duties of the personnel.

Q. Can you tell us how many fulltime employees the station has?—A. Fulltime employees, ten I believe.

Q. Does this exhibit include any parttime employees?—A. Yes; under staff musical talent that naturally would be parttime, and also the officers listed, some of them of course are very much parttime.

Q. Was this exhibit prepared by you?—A. It was.

Mr. ROLLO. I offer in evidence at this time WKBB Exhibit No. 16-A.

The EXAMINER. WKBB Exhibit No. 16-A will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 16-A, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I show you what has been marked WKBB Exhibit No. 17 and ask you to tell us what that is, please.—A. This is an explanation of the programs of Radio Station WKBB for a period of two weeks beginning with Sunday, August 30, 1936, and continuing through Saturday, September 12th, the past two weeks just preceding this one.

It gives the titles of the programs and an explanation as to what the programs are.

Q. Does it represent a complete schedule of those two
195 weeks?—A. It does, with the exception of spot announcements and that type of thing. These are programs.

Q. Would you say these two weeks of programs are typical of the service being rendered by WKBB?—A. Yes; I would. There are a few special things in them because of the season, but naturally it would be typical, because other seasons have existed in other periods of the year.

Q. Was the exhibit prepared by you?—A. It was.

Q. Were the explanations of each program prepared by you?—A. They were.

Q. Are you prepared to state this is a correct presentation of the programs carried over the two-week period it covers?—A. Yes; I am.

Mr. ROLLO. I offer in evidence at this time WZBB Exhibit No. 17.

The EXAMINER. WKBB Exhibit No. 17 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 17, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. Does WKBB has a network affiliation?—A. It does.

Q. With what network?—A. The Affiliated Broadcasting Company.

Q. Have you determined the amount of network program you have carried from that network in the period covered by the previous Exhibit No. 16?—A. I have.

Q. I show you what hase been marked WKBB Exhibit No. 18, and ask you to state if that is your calculation on that subject?—A. It is.

Q. Was this exhibit prepared by you?—A. It was.

Q. Is it correct?—A. It is.

Mr. ROLLO. I offer in evidence at this time WKBB Exhibit No. 18.

The EXAMINER. WKBB Exhibit 18 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 18, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

196 By Mr. ROLLO:

Q. Mr. Carpenter, have you made an analysis of the two-week program shown in Exhibit 17 in order to determine the amount of time devoted to live talent, transcriptions, and phonograph records?—A. I have.

Q. I show you what has been marked WKBB Exhibit No. 19, and ask you to state if that is the result of that analysis.—A. It is.

Q. Was this exhibit prepared by you?—A. It was.

Q. And is it correct?—A. It is.

Mr. ROLLO. I offer in evidence at this time WKBB Exhibit No. 19.

The EXAMINER. WKBB Exhibit No. 19 is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 19, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. Mr. Carpenter, have you made an analysis of the programs in Exhibit No. 17 to show the amount of time devoted to various types of programs?—A. I have.

Q. I show you what has been marked WKBB Exhibit No. 20, and ask you to state if that is the result of that analysis.—A. It is.

Q. Was the exhibit you have before you prepared by you?—A. It was.

Q. Is it correct?—A. It is.

Mr. ROLLO. Mr. Examiner, at this time I offer in evidence WKBB Exhibit No. 20.

The EXAMINER. WKBB Exhibit No. 20 is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 20, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I wish you would describe the various classifications you have used on this last exhibit, tell us just what type
197 of material you included under each of your classification headings.—A. Generally speaking the predominant factor in any program which is listed there was taken as being the classification under which the program was listed.

Under popular music was included all types of popular music from rythm to the modern compositions of composers like Gershwin and others of that kind. Also included under that classification was the program each weekday morning one hour known as the Musical Clock, which, although it is predominantly made up of popular music, it also includes time signals, weather reports, news, martial music and such, but I offer that as an explanation of what is meant by popular music. Everything predominantly popular music was given that classification.

Under sports the classification is made up of actual broadcasts of sporting events such as baseball games of the major leagues in Chicago.

Under semiclassical music all music of the ballad type of music and melody type, such as those of Victor Herbert and others of that kind, and the works of Stephen Foster, all of the music of that nature appears under that heading.

Under news these were actual news broadcasts of all natures, local, state, and national, including any political reports and sports news not sports events.

Under educational, the programs under this classification were exclusively educational in nature, being talks either from ma-

terial furnished to the station or made by persons in authority on educational matters. Of course, many of the regular programs of the station also have educational features, but unless the entire program was devoted to education it was not classified under this heading.

Under dramatics, this classification included all plays of either single or serial form with the exception of those that were listed under children program headings.

Classical music, this includes the works of the famous master composers such as Beethoven, Bach, and many of those.

Under Children's programs, this includes dramatic series such as our Adventures of Jimmy Allen, Tenderfoot, The Kids
198 Next Door, as well as the program which is known as Uncle Tom, which is a period set aside each weekday evening to remember and dedicate numbers in the Dubuque area.

Under religious programs, this includes the United Sunday Services which are broadcast each Sunday morning under the direction of the Dubuque Protestant Ministers Association, and also a program each weekday morning known as Country Church, which consists of hymns, a short sermon and prayer. This also includes any special features for annual religious days.

I might mention at this point, that several other programs on the station, such as The Old Lamplighter are semi-religious in classification, but are not listed under this classification of programs.

The folk music classification includes hill billy and other programs of folk music such as John Dietz.

Farm programs, this includes only the programs which are devoted exclusively to soil and crop problems. Of course, there is very little difference between the farm and the city people in the Dubuque area, consequently all programs must be made of interest to all people.

Under civic, special events, and miscellaneous, this includes such programs as the "Man on the Street," "The Old Lamplighter," "Traffic Court," and "Louis Rosenfeld with his Theatrical Stars of Days Gone By."

I believe that covers all of the classifications.

Q. Have you made an analysis of the programs contained in Exhibit No. 17 to determine the amount of time devoted to sponsored programs and to sustaining?—A. I have.

Q. I show you what has been marked WKBB Exhibit No. 21 and ask you if that is the result of that analysis.—A. It is.

Q. Is that exhibit correct?—A. It is.

Mr. ROLLO. I offer in evidence at this time, WKBB Exhibit No. 21.

The EXAMINER. WKBB Exhibit No. 21 is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 21, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

199 By Mr. ROLLO:

Q. Mr. Carpenter, I now show you has been marked WKBB Exhibit No. 22, and ask you to describe it, please.—A. This is an analysis of the programs of Radio Station WKBB from April 1st, 1936, until and including September 12th of this year, showing the types of program, the number of hours operated by the station, and so forth.

Q. On page 2 of the exhibit I notice under Navy programs there is a correction. Will you explain that correction, please?—A. Yes; there is a correction. In gathering the material for this exhibit and in preparing it I was erroneously informed that a program by the Navy had been scheduled for last week. I found it was scheduled for the following week; that is, this present week that is in existence now, a semiweekly five-minute program by the recruiting officer of the Navy, and rather than take time to retype the entire exhibit I merely crossed it out.

Q. I also notice a correction in miscellaneous that the figure 24 had been crossed out and the 23 written in. Will you explain that, please?—A. That is right. Sheriff Tom Ryder was scheduled for a safety talk over our station last Thursday evening at 6:45, but due to the press of some other business it was impossible for him to be there and he did not appear, so his name has been crossed off of the list.

Q. Would that make a difference in the total of 24 quarter hours shown under that type of program?—A. Yes; it would make it 23 quarter hours.

Q. Now, will you tell us whether or not each of the various types of program you have listed on this exhibit are carried as regular features, taking them one by one?—A. You mean explain each of the programs that are listed there?

Q. Yes; in so far as whether or not they are regular features of the station.—A. The number of educational programs broadcast is 834; the number of organizations broadcast is 126 quarter hours in the last 165 days, including the Y. M. C. A., the Y. W. C. A., Hull House, Field Museum, University of Chicago, Household Science Institute, et cetera, carried as regular weekly features over the station, as can be told by the fact of their number of appearances.

200 Health Talks are regular once-a-week features over the station, made by local doctors and dentists.

The Parent-Teachers Association was a regular feature over the station during the past school term. Inasmuch as school is just now commencing we have had no talks as yet this year by the Parent-Teachers Association, but they were regular until the close of school last year.

Americanism programs, they were regular up until last year's close of school.

First Aid programs have continued each Sunday afternoon for 20 weeks, and will continue.

Homemakers' programs is a regular daily feature over the station except Sunday.

Likewise is the Fashion Parade a regular feature over the station except Sunday.

Book reviews are regular weekly features.

Dubuque history and travel for the past 15 weeks has been a weekly feature and will continue so.

Weather Bureau is a regular feature. Of course, we cooperate very closely with the Weather Bureau.

Q. While we are on that, tell us what you carry in the way of weather forecasts?—A. In the Homemakers' program which bears the title "Your Home" each morning, we include a shoppers' weather forecast, which is merely a forecast for Dubuque and vicinity and for the balance of that day.

From 12:25 to 12:30 o'clock approximately each day except Sunday we give the official weather forecast as prepared by the Weather Bureau Department in Dubuque.

We again forecast weather for Dubuque and vicinity, for Wisconsin, for Iowa, and for Illinois, and in addition we forecast for the river and the river stations, the river bulletin it is called.

We give also the weather conditions in the past 24 hours, and that is the way it is given to us. It is a complete reading of the weather maps furnished by the United States Department of Agriculture Weather Bureau.

Also at 6:00 o'clock in the evening we give a final short forecast, which is a repeat of the local forecast.

Q. Proceed with the other items on that exhibit.—A. Under World Bookman, this is a regular feature over the station.

201 The Humane Society was only during Humane Week, as it is noted. We opened our facilities to them for what they requested.

Under Civic Music Association, this was during their particular drive this summer when we gave them time on the station.

The Navy program I have explained already, I believe.

Under Special Day program, we of course on all special days carry programs, and in that connection a Flag Day program is given, a Memorial Day program which is an hour and we have

a special program on Grand Army Day. We had two quarter hours at the close of public schools last year, primarily on safety and two quarter hours at the parochial schools last spring talking safety, since the children would be on the streets at the close of school. There was of course a special program on the 4th of July.

Under Civics, we have talks from certain civic and educational leaders of our community.

I show a list also of the number of farm programs that have been broadcast by WKBB from April 1st to September 12th, talks given by the County Agent, which is the agent of Dubuque County, Frank Carrigan. You will notice under that item we show 12 half hours in addition to the quarter hours. Those half hours were when the farm program was extended in order to take care of special requests by Mr. Carrigan.

I remember in particular one of those was in connection with barberry eradication in the territory surrounding Dubuque, and we gave special time to an interview with Mr. Bauer of the United States Department of Agriculture on the barberry eradication problem.

In addition to that, during the time when grasshopper eradication and control was quite a problem, we had an additional broadcast on that subject, and the same thing is true of the white grub, as I recall, and one other special program I don't recall for the moment just what it was.

Religious broadcasts are also listed there showing the services in the half hours which were given at the United Sunday Service of the Ministerial Association. Quarter hours are most of them over the A. B. C. network. Of course there are special programs such as hour programs which come on Palm Sunday, Easter Sunday and other religious days.

202 The three-hour program was on Good Friday when we gave very much of a union service, getting together for the first time not only the Protestant but the Catholic people of Dubuque, where Monsignor Wolfe gave a talk on the Seven Last Steps, and he was supported by a United Protestant Choir.

The next item, Civic Affairs, Interviews and Public Service show such programs as the Man on the Street which is our regular daily inquiring reporter news.

Club News and Social Calendar is a regular feature over the station. I mention on this also the arrival of the "Green Diamond" which was the arrival of the special streamlined train, where 5,000 people gathered for the special broadcast, and the main reason for the broadcast was that the Governor of Iowa, Governor Herring was on the train, and we broadcast his short address.

For Senator Murphy of Dubuque, who died a short time ago we held a regular memorial service, where there were talks by Senator Walsh of Massachusetts, Senator William Dietrich of Illinois, Senator Duffy of Wisconsin, Representative Gaughn of Delaware County, Governor Herring of Iowa, and Lieutenant Governor Kraschel of Iowa, with these men eulogizing the memory of Senator Murphy.

The EXAMINER. At this time we will take a recess until 1:00 o'clock.

(Whereupon at 12:00 o'clock noon a recess was taken until 1:00 o'clock p. m. of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 1:00 o'clock p. m., pursuant to the taking of the recess at noon.)

The EXAMINER. Proceed with your examination.

Whereupon JAMES D. CARPENTER the witness on the stand at the time of the taking of the recess, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. ROLLO:

Q. Mr. Carpenter, prior to the recess you were discussing WKBB Exhibit No. 22, and if I am not mistaken had just concluded your remarks on the "Man on the Street" program appearing on page 3 of the exhibit under Civic Affairs, Interviews and Public Service.—A. I think, Mr. Rollo, I was a little bit farther than that. I had just finished with Senator Murphy's memorial service that we had broadcast there.

Q. Now, will you continue your discussion from there on?—A. Yes, sir. I mention as one item of public service the broadcast direct from Davenport of the Western Open Golf Finals, which came to us over the Affiliated Broadcasting Company, Davenport being some 60 to 65 miles airline from Dubuque, and this being a sporting event it was pretty closely followed in Dubuque. We classed that as public service.

In addition to the Americanism programs sponsored by the American Legion toward the close of the last school year in June of 1936 we also broadcast regular weekly programs under the sponsorship of the American Legion, which also discontinued at approximately the same time.

Under the classification of "Police Headquarters"——

Q. (Interposing.) Will those programs be resumed again when the school year commences?—A. It will depend entirely of course

upon the American Legion and the availability of their people, and that type of thing. As far as the station is concerned we are very happy to have it continue.

As to the classification "Police Headquarters" we have no complete record, because it would be impossible to give the number of minutes or periods that were taken up by the Police Department. We make daily contacts with the City of Dubuque Police Department either by telephone or by personal call, and as testified in the depositions by the Chief of Police Giellis, I think the record speaks for itself on the complete cooperation that we gave to the Police Department for the broadcast of any accidents, deaths, missing persons, or stolen property. That same is true of the sheriff's office for county news.

"Conservation Week in Illinois" is mentioned here because during that week we carried six quarter hours, which were broadcast, and one-quarter hour of that time was personally by Governor Horner of Illinois, and there were five other broadcasts by persons in the Conservation Department.

204 The "City Rescue Mission" has broadcast many appeals over the station, several since I have been connected with the station, appeals for funds, or clothing, to take care of the unfortunates of the City Rescue Mission.

The "Visiting Nurse Association" I have no definite record on of the actual number of times broadcast, but we have offered and they have made use of complete cooperation of the station.

The "Ministerial Association" has a radio committee, or that is the Dubuque Protestant Ministerial Association has a radio committee that each year assigns the different ministers belonging to the association to certain Sundays where they are to take part in the United Sunday Services over WKBB.

The Dubuque Women's Club has arranged with the station to broadcast a program on each annual day of national importance, such as Constitution Day and Discovery Day, and so forth.

The Humane Society I think I mentioned once before as having programs during Humane Week.

Notre Dame University at South Bend, Indiana, has quite an alumni group in Dubuque, and we broadcast their annual program, not in its entirety, but we took recognition of that and made a special broadcast for the Notre Dame alumni.

As to the Mobilization for Human Needs, the Community Chest, we have offered the complete cooperation of the station.

And the same way with the Red Cross.

I believe I explained the Weather Bureau, with the exception of the fact that during extreme weather either hot or cold, we have broadcast almost hourly reports from the Weather Bureau to give the temperature and the forecast for the following day.

The Y. M. C. A. and C. Y. O., the Young Men's Christian Association and the Catholic Youth Organization both have regular weekly programs over the station. And mention is made of the Farm Bureau picnic and dance. This is a remote broadcast where we pick it up with out charge of course to them.

Athletic Events on our record show from our logs that we have broadcast many football and basketball games of
205 the local high school and Columbia College, and also some football direct from Iowa City, the University of Iowa.

As far as the coverage of local sports news is concerned, we have a daily review, and in this period in addition to general sports news we give interviews with sports celebrities of baseball, boxing, wrestling, golf, and tennis, particularly Dubuque celebrities.

The next classification of programs on the exhibit shows the number of children's programs broadcast and lists the types of programs those are, Air Adventures of Jimmey Allen, which I believe needs no explanation, as it is carried over a great number of stations; Tenderfoot and the Kids Next Door, both of which features are carried by the Affiliated Broadcasting Company.

Uncle Tom is a program which we set aside each evening and dedicate to the birthdays of the young children, and all they have to do is to send in a postcard or letter to the station giving the name of their birthday, and we broadcast a number and dedicate it to that particular child.

As to the reading and dramatization of the comic strips, I think goes without saying.

Number of News Broadcasts is next. We have regular news periods for local and national news, four periods daily, except Sunday. Two of those are five-minute periods in the morning at 9:15 and 10:15. There is one at the noon hour from 12:15 to 12:30, and one evening period from 7:00 to 7:15. In addition to that, from 9:45 to 10:00 each night, we have a dramatized period of humorous incidents from the day's news.

We have daily a quarter-hour program which features club and social news at 1:00 o'clock every day.

We have our sports review news program in the evening at 6:00 o'clock.

On Sundays we carry the Remington Rand program of "The News Comes to Life." And then included in news would be any number of these special broadcasts from the police and the sheriff's headquarters.

Q. Was this exhibit which you have just described prepared by you?—A. It was.

Q. And is it correct in every detail?—A. Yes.

Mr. ROLLO. I offer Exhibit 22 in evidence.

The EXAMINER. WKBB Exhibit No. 22 is admitted in evidence.

206 (The document referred to was received in evidence marked "WKBB Exhibit No. 22, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now hand you what has been marked "WKBB Exhibit No. 23" and ask you to describe it, please, page by page.—A. This is a Market Data and Survey Information Book, as we call it. It gives Dubuque market data concerning the population, population analysis, buying-power indices, transportation facilities, the principal industries, the wholesale and retail outlets, and other miscellaneous information.

It shows also some of the retail zone data for WKBB.

It gives a coverage map of primary and secondary coverage of the station as shown by engineering measurements of the inner-line to the .5 millivolt contour daytime, and the outerline the .1 millivolt contour.

Q. Is that map, do you know, the same one that was introduced through Mr. Page?—A. It is. That map was prepared by Mr. Page. It describes also a survey conducted in the City of Dubuque during the week of July 27th, and the following pages are devoted mostly to the explanation of that survey, with the exception of the last two pages, which——

Q. (Interposing.) Just a moment. On this survey, that was a telephone survey?—A. That was a telephone survey.

Q. Will you describe how that survey was conducted?—A. I will read what is there if you would like. It says:

"In order to determine with accuracy the listening habits of radio-set owners in Dubuque special telephone operators were engaged to secure answers to certain key questions, which are shown on the survey form appearing on the following page.

"From the city telephone directory pages were taken at random and the operators telephoned the residence numbers listed on those pages. When the 'phoned telephone was answered the operator made the following statement and asked the following question:

"'Good morning' (afternoo' or evening, depending upon the time of day). 'We are making a radio survey of the city. Will you answer a few short questions, please?'

207 "If the answer was 'Yes,' the operator then proceeded to ask the questions as listed on the form, checking 'Yes' or 'No' for the first three questions and filling in the call letters of the stations which were given in answer to question No. 4.

"During the four days," and incidentally there is an error which was made, as the survey consumed five days, and has never been corrected in this survey.

"During the four days consumed in making the survey the number of completed calls totalled 2,282. Since there are 9,141 telephones listed in the city telephone directory, this represented a survey of 25 percent of the homes in Dubuque. 10 percent is usually regarded as sufficient for survey purposes, but this greater percentage was taken in the interest of absolute accuracy.

"At no time did the operators divulge that WKBB was in any way connected with the making of the survey, so that persons responding were in no way influenced in their answers.

"After filling in the forms in accordance with the answers received, the operators signed and dated the forms, testifying to their accuracy.

"The facts concerning listening habits in Dubuque as disclosed by this survey are shown on the following page."

Q. Did you supervise the telephone girls making the calls?—A. I did.

Q. Were you present during the five days that these calls were going on?—A. Not every minute of the five days, no; but I was present in and out of where the survey was being made constantly.

Q. Did you personally tabulate the result of those telephone calls?—A. With the assistance of the operators I did.

Q. And would you describe now the following pages?—A. The first page immediately following the one which I have read shows a copy of the survey which was used.

The page following that gives the answers of the 2,282, "Yes" or "No" to question No. 1.

And then the 2,142 questionnaires on question No. 3.

The next page shows questions Nos. 3 and 4 interpreted with the results.

The next page shows the answer to question No. 2 determining the times of day when people in Dubuque listen to radio.

208 Following that we have included in this book a program analysis which is charted, and then on the following page, taking a typical week, the programs for the week of August 16th of this year.

Q. You were, of course, connected with the station during that week?—A. I was. I made this analysis.

Mr. ROLLO. I offer that exhibit in evidence.

Mr. LOVETT. Mr. Examiner, I object to the introduction of this in evidence insofar as it covers information not received by the witness. He states he was present during some of the time when

certain telephone operators asked questions. He did not hear the questions. The answers are dependent entirely upon the accuracy with which the operators took down the information at hand. Unless those operators are present to testify as to how it was conducted and what was stated I do not think it is competent, and object to it on that ground.

The EXAMINER. The objection is overruled. Exhibit No. 23 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 23, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now show you what has been marked "Applicant's Exhibit No. 24" and ask you to describe it, please.—A. This a program analysis of the programs on Station WKBB from April 1, 1936, to September 12th, inclusive, on analysis made quite similar to Exhibit No. —, whatever it was.

Q. You have reference to the exhibit——A. For the two weeks' program.

Q. For the two weeks' program?—A. The last two weeks preceding this hearing.

Q. Was this prepared by you?—A. It was.

Q. Is it correct?—A. It is.

Mr. ROLLO. I offer Exhibit 24 in evidence.

The EXAMINER. When did you first come with the station?

The WITNESS. March the 28th.

209 The EXAMINER. All right. Exhibit 24 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 24, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now show you what has been marked WKBB Exhibit No. 25, and ask you to describe it. A. This is a transcript of the talent file of used talent over WKBB. We keep a file of all available talent in the Dubuque area, and this represents the portion of the file which has been marked as having appeared over the station.

(Discussion off the record.)

The EXAMINER. All right, proceed with your questioning.

By Mr. ROLLO:

Q. You described the Exhibit 25, the talent file, did you not?—A. Yes.

Q. Was this exhibit prepared by you?—A. It was.

Q. And it is correct?—A. It is correct and taken from the talent file.

Mr. ROLLO. I offer Exhibit 25 in evidence.

By the EXAMINER:

Q. Let us see. Did you contact these people?—A. No, sir. This was taken from our talent file.

Q. How was that built up?—A. That has been built up by our program department. They keep a complete record of the talent.

Q. These people have appeared from time to time on the programs?—A. That is right.

Q. I see.—A. You see, we have a talent file which shows the talent in the Dubuque area.

Q. Yes?—A. That is as near as we know what it is, and we divide that into two sections. Of course, we classify the type of music or type of talent that each different card in that file
210 is. Then we divide that into two sections, whether they have been used, or have not been used over the station.

Q. So this is the used talent?—A. This is taken from the used talent file.

Q. How recent was this compiled?—A. Well, the talent file has been in existence this particular talent file, I would judge, for a year and a half. The compilation was made just last week.

Q. These people all live in that community, do they?—A. Oh, yes, or the surrounding community.

By Mr. LOVETT:

Q. They were used over the past year and a half, is that right?—A. I would judge so. Frankly, the talent file has been in existence I believe about a year and a half.

The EXAMINER. Exhibit No. 25 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 25, Docket No. 4631," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now show you what has been marked WKBB Exhibit No. 26 and ask you to tell us what it is.—A. This is a list of advertising accounts appearing from the records on the books of the station as having used the station during this current year of 1936.

Q. And was that exhibit prepared by you?—A. It was.

Mr. ROLLO. I offer Exhibit 26 in evidence.

By The EXAMINER:

Q. Is there any advertisers who have ever applied for time and who have been denied?—A. There have not been, other than the liquor advertisements which have been turned down.

Q. I mean legitimate, I mean commercial advertisers outside of liquor and patent medicines? I mean by that that you have ample space for them?—A. Yes, sir. The commercial analysis that was offered in evidence shows that.

211 The EXAMINER. Exhibit No. 26 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 26, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. I now show you what has been marked WKBB Exhibit No. 27 and ask you to describe it.—A. This is also taken from the billing records of the station showing advertisers in the past who have used WKBB.

Q. Do any of the advertisers appearing on Exhibit 26 appear on Exhibit 27?—A. They do not.

Q. None of these advertisers are now using Station WKBB.—A. No; because a good many of them are seasonal and are due for fall advertising this year, and the records show they were fall advertisers last year.

Q. Was this exhibit prepared by you?—A. It was.

Mr. ROLLO. I offer Exhibit 27 in evidence.

The EXAMINER. The exhibit is admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 27, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. LOVETT:

Q. May I ask over what period this is. Is that since the operation of the station in Dubuque?—A. That is right.

Q. Up to the first of this year?—A. That is right.

By Mr. ROLLO:

Q. I now show you what has been marked WKBB Exhibit No. 28, and ask you to tell us what it is, please.—A. This is taken from my own personal prospect file of advertisers in Dubuque who have never used the station, and upon whom calls during the past six months have been made.

Q. Does this include all prospective advertisers in Dubuque that haven't used the station to date?—A. My determination of them has been that they are other than accounts who have used WKBB in the past, the best prospects for radio advertising in Dubuque.

212 Q. Are there any other business organizations in Dubuque that have not used WKBB which have not been included in this exhibit?—A. Yes; there are.

Q. Would they be prospective radio advertisers?—A. That of course is hard to determine. Offhand I would say most of them would not be, because there are some 140 taverns in Dubuque that I would not class as prospective radio advertisers. There are several small markets and a number of small grocery stores and small drug stores that I would not classify as prospective radio advertisers, and they do not appear on this list. And there are any number of very small accounts that I think would in a large measure be a waste of time to try to get on any regular advertising basis by radio.

Q. Have you attempted to sell radio time to the concerns enumerated on this exhibit?—A. Either myself or other persons in the sales department. I have the majority of them there.

Mr. ROLLO. I offer Exhibit No. 28 in evidence.

The EXAMINER. Exhibit 28 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 28, Docket No. 4031," and is filed with the transcript in the possession of the Commission.)

By Mr. ROLLO:

Q. Mr. Carpenter, I show you Telegraph Herald Exhibit No. 6, which is a list of some 60 advertisers that have been contacted by them for radio advertising. Will you tell me which if any of those advertisers have advertised over Radio Station WKBB?—A. Do you wish me to enumerate and name the ones that have, or just the number of them, or what?

Q. I think you better enumerate them.—A. J. F. Stampfer Company, Hartman's Furniture Company, Belsky Motor Company, Grand Theatre Corporation, Firestone Service Station, Mulligan Battery & Electric Company, R. Hermann & Son, Furniture; Leath Furniture Store, Midwest-Timmerman Company, Jordan-Fields Clothing Company, Linehan & Molo, Kinney Shoe Store, Landon Furriers, Model Wall Paper & Paint Com-
213 pany, Lange Dying & Cleaning Works, Kassler Motor Company, Mullen Brothers, Sommerfeld's Cleaners, L. B. Wertz Meat Market, Dubuque Star Brewery, Big Shoe Store, Roehl-Phillips Furniture Company, Renier Music House, Ruprecht Brothers Company, The Hub Clothiers, Kies Bootrie, Inc., Hartig Drug Company, Dubuque Tire & Battery Company, Sibbing Jewelry Store, Montgomer-Ward & Company, Kraft Clothing Store, Enzler Trunk & Luggage Company, and the Rhomberg Fur Company, a total of 33.

The EXAMINER. How recent have those people advertised, do you know?

The WITNESS. During 1936. I gave a list of 33. Of that list 18 have advertised this year.

By Mr. LOVETT:

Q. In order to make the record easier to examine later might we ask how frequently?—A. P frequently?

Q. Those 18 have broadcast.— Or how recently?

Q. Both.—A. All right. We v take during 1936; the J. F. Stampfer Company first carried a half hour daily over the station until, I believe, sometime in February. Now, that was before my connection with the station, and I personally do not know the exact time which they discontinued; I don't know whether February or March. It was along in there sometime.

Hartman's were daily advertisers over the station until July of this year, when they asked for a discontinuance during the summer months.

The Belsky Motor Company has carried a regular weekly program. That is a tri-weekly program, three times a week, which is now on our suspension list until the 1st of October.

The Grand Theatre Corporation advertise daily over the station at the present time, and have for quite some time.

The Firestone Service Stores advertised until the 3rd of July.

The Mulligan Battery & Electric Company advertised during the period from June 15 to August 15, I believe.

R. Hermann & Son, Furniture——

Q. (Interposing.) Was that spot announcements?—A. Spot announcements for Mulligan. Many of these are not spot announcements. Do you want me to go back and give the others?

214 Q. Yes.—A. To go back, the J. F. Stampfer Company had a half-hour daily program.

Hartmann's was a 10-minute daily program.

Belsky's was three 15-minute programs a week.

Grand Theatre Corporation was a weekly program until in July, I believe, when it became a spot announcement program during the summer months.

Firestone Service Stores carried an announcement in conjunction with the Jimmy Allen series which ran five nights a week.

The Mulligan Battery & Electric Company was an announcement advertisement.

R. Hermann & Son were also an announcement advertiser.

The Leath Furniture Store sponsors a daily 15-minute program over the station at the present time.

The Midwest-Timmerman Company carried three quarter-hour periods weekly until sometime in July, at which time it was suspended during the summer months until fall.

Q. In each case this is from January 1st so far as you know?—A. Well, a lot of them so far as I know. As to Leath that was

not January 1st. They were sold on radio for the first time—that is, on a definite daily-schedule basis—in July.

Jordan-Fields carried spot announcements several times a day during the spring season, and they have not during the summer. It is a clothing company.

Linehan & Molo has carried spot announcements.

Kinney Shoe Store carried several spot announcements during special sales.

The Landon Furriers had——

Q. (Interposing.) Are they on now, those last two?

A. No; neither one of those are on now. The Landon Furriers ran until, I believe, February or March. And I know that was just before my time. It was a daily feature program.

The Model Wall Paper & Paint Company during the spring housecleaning season and the summer paint season ran announcements. Of course, I could enumerate here also, if you want it, what their plans are for fall.

215 Q. No; just give the list.—A. The Lange Dying & Cleaning Company ran spot announcements and are not on at the present time. The Kassler Motor Company has a contract with us that is to begin soon. It has not as yet started, but the contract is on file.

As to the Dubuque Tire & Battery Company, that is not one I gave as this year, nor the Sibbing Jewelry Store, because that was last fall season.

The Kraft Clothing Store has a daily program over our station. These daily I speak of are daily except Sunday.

And the Rhomberg Fur Company had a daily program over the station until sometime in February or March, I believe.

Q. Spot announcement?—A. Programs.

Q. You say programs. You mean five minutes?—A. By programs, I mean five to fifteen. I mean 15 with the exception of, I believe, two, one of which was a half an hour. The other one was five minutes.

Mr. LOVETT. Thank you.

By Mr. ROLLO:

Q. I now show you Telegraph Herald Exhibit No. 5, which is a list of program material, headed "Additional Program Material." Will you state whether or not any of that talent appears over WKBB, or has appeared?—A. I would say Ray Alderson's orchestra appeared over the station; I do not know how frequently.

The Aces of Melody, from Shullsburg, Wisconsin, the Columbia College Military Bank listed here, the Columbia Academy Band, the Soprana Accordion Club listed here under the direction of Vince Chewning, ministers from Wartburg Theological Seminary, Juanita Heim, Red Hittenmiller, who has appeared quite fre-

quently, and without checking one for one there, I really can't say. Some of these names are not quite familiar. I think those have appeared.

Q. A comparison of the talent file of WKBB would not doubt show others, would it not?—A. Yes. And Bill Zumhof I see on here. Quite often over the station.

By Mr. LOVETT:

Q. None of these are appearing at the present time, is that right?—A. Yes; some of them are. It is awfully hard
216 out of a clear sky in five months' association in Dubuque to know the talent other than with a file on hand.

By Mr. ROLLO:

Q. If you know, are there any appearing at the present time?—A. Zumhof is the only one there that I can see without going into the file that is appearing there at the present time.

Q. I now show you what has been marked "WKBB Exhibit No. 29," and ask you to describe it, please.—A. This is a copy of the local advertising rates of Radio Station WKBB for sponsored programs and spot announcements.

Q. Was that prepared by you?—A. It was.

Q. Is it correct?—A. It is.

Mr. ROLLO. I offer the exhibit in evidence.

The EXAMINER. Exhibit 29 will be admitted in evidence.

(The document referred to was received in evidence, marked "WKBB Exhibit No. 29, Docket No. 4031," and is filed with the transcript in possession of the Commission.)

By Mr. ROLLO:

Q. Mr. Carpenter, what attempts have you made since your association with the station to obtain program listings in the Telegraph Herald?—A. At the time that Radio Station WKBB became affiliated with the Affiliated Broadcasting Company on the 14th of September, to be exact, of the opening program, and continuing for a period of five weeks I sent the——

Q. (Interposing.) Just a minute. What date did you state?—A. The 14th of April.

The EXAMINER. What year?

The WITNESS. This year; 1936.

The EXAMINER. Go ahead now.

A. (Continuing.) I sent to the Telegraph Herald complete programs of the Affiliated Broadcasting Company, as indicated, for the outlet over the local Station WKBB. I did that for a period of five weeks, together with publicity releases concerning the outstanding programs of the Affiliated Broadcasting Company.

The EXAMINER: Who is the Affiliated Broadcasting Company?

217 The WITNESS. The Affiliated Broadcasting Company has as its president Mr. Samuel Insull. At the time of the beginning of the organization the vice president in charge of production was Mr. Ota Gygi. The assistant to Mr. Insull and the national salesmanager as I recall was Mr. George Roessler.

The EXAMINER. Is that a Chicago concern?

The WITNESS. Yes; in Chicago. The programs are originated on the 42nd floor of the Civic Opera Building in Chicago together with any other remotes that happen to be of interest throughout the Middlewest.

The EXAMINER. Go ahead.

By Mr. ROLLO:

Q. Over what section of the country does that network extend?—A. The network includes stations in Indiana, Illinois, and Wisconsin, and our station to serve a portion of Iowa, the station in St. Louis, Missouri, one station there is also included, and at the start a station in Minneapolis, Minnesota, was included which I understand has been dropped during the past month.

Q. Now, referring back again to the mailing of your program lists to the Telegraph Herald, did they ever appear in the Telegraph Herald?—A. They did not.

Q. Have you done anything else, made any other attempts to cooperate with the newspaper since your association with the station?—A. I recall shortly after my coming to the station—I will put it this way—we received from the World Broadcasting System, for example, publicity material concerning their Musical Moments, a program which is for the Chevrolet Motor Company, and features Rubinoff and his violin and Jan Pierce, and a few other very outstanding artists. They sent publicity releases to the station for forwarding to the local newspapers. That is done all over the country by the World Broadcasting System, as I understand it. I received a letter from the Mathey Chevrolet Company, the local Chevrolet dealer, wanting to know why these publicity releases never appeared in the Telegraph Herald.

Mr. Mathey had noted on his letter that a copy had been sent to Mr. Woodward of the Telegraph Herald. I in turn replied to Mr. Mathey, sending a copy of my letter to Mr.
218 Woodward, in which I stated that I did not know all of the reasons behind the failure of the Telegraph Herald to cooperate in publishing program listins or material with relation to programs, and that I would welcome some way that the station and the Telegraph Herald could get together upon an amicable basis.

By The EXAMINER:

Q. Did a copy of that letter go to Mr. Woodward?—A. A copy of the letter was sent to Mr. Woodward.

Q. Did you ever get a reply from him?—A. I never had any reply.

Q. Have your local programs ever appeared in the Telegraph Herald?—A. They have not.

Q. Columns?—A. They have not since my time there.

Q. I am talking about since you have been there?—A. Never.

Q. Have you ever submitted any of them?—A. The local programs? No.

Q. Why didn't you?—A. Because I had understood the attitude of the Telegraph Herald, and when I attempted to get even chain programs published I thought there would be no use sending local programs if they would not publish the chain programs.

Q. Aren't there other chain programs published in the paper?—A. The National and Columbia are published in the paper.

Q. Do you know whether they are paid for or not, or are they just published free?—A. I do not know.

The EXAMINER. That can be developed later. Go ahead.

By Mr. ROLLO:

Q. Have you ever broadcast any programs in which you mentioned the Telegraph Herald?—A. Yes; we have.

Q. Will you describe that, please?—A. In the spring of 1935, which was before my affiliation with the station, as a representative of the Radio Transcription Company of America, I called upon Mr. Klauer in Dubuque.

I sold Mr. Klauer a series of programs known as Front Page Headlines, which were designed for a local radio station to give publicity to a newspaper.

And when I went there on a subsequent trip, still in the spring of 1935, I heard the first of the series go on the air,
219 dedicated to the Telegraph Herald of Dubuque, Iowa.

The exact wording I do not remember, but it was dedicated to the Telegraph Herald and Times-Journal and Dubuque News. Now, there was a series of those programs. I heard the first of them. I do not know about the balance.

Q. You know the first one was actually broadcast?—A. I know the first one went on the air. I was present.

The EXAMINER. What was the nature of those programs?

The WITNESS. They were dramatized stories of newspaper life, showing the trials and tribulations of reporters and so forth in securing news.

By Mr. ROLLO:

Q. Mr. Carpenter, I now show you WKBB Exhibit 1-A, 1-B, and so forth, being copies of the newspapers of the Telegraph Herald, and ask you to look through those and tell me whether you can find any reference to WKBB radio station in the news columns, in the advertising, or on the radio page.

(Discussion off the record.)

Mr. ROLLO. Let me withdraw my last question, which has not been answered yet, as to examining the newspapers, since that will be covered later, as I understand it.

The EXAMINER. All right.

By Mr. ROLLO:

Q. Now, Mr. Carpenter, since you have been connected with the station what has been your experience with regard to the time of day or night that civic organizations have requested time generally?—A. Naturally, that has varied.

Q. Let us take some of the specific examples shown in your program of Safety Talks, such as the city manager and chief of police and so forth, what time have they usually requested?—A. They requested and were assigned the time from 6:45 to 7:00 in the evening.

Q. How about your Emergency Calls that you have broadcast from the sheriff's office and Weather Bureau?—A. The Emergency Calls have come all hours of the day and evening. I would say they would be very much evenly divided.

Q. How about the American Legion programs?—A. They requested evening time.

220 Q. And have you given them evening time?—A. We gave them evening time.

Q. How about your basketball games?—A. Our basketball games are played at night.

Q. How about your football?—A. As to football some were night games at the lighted athletic field, but some also were day games.

Q. How about your music recitals?—A. As to music recitals I have personally received no request to broadcast music recitals.

Q. Do you have any particular problem in getting live talent during the daytime?—A. Yes.

Q. What is that problem?—A. Naturally we do, other than on Saturday afternoon or Sundays. We have a problem that most of the talent in Dubuque works at other jobs and are busy during the day.

Q. Is it true then that they are only available in the evening for broadcast purposes?—A. Most of them; yes.

Q. How about your special day programs that you have discussed previously?—A. Special day programs mostly appeared during the daytime.

Q. How about the miscellaneous talks listed on one of the previous exhibits?—A. Those are about evenly divided between day and night.

Q. Now, did you hear Mr. Arndt's testimony with reference to the program service that he proposed?—A. I did.

Q. Do you recall he testified orally as to several programs which he proposed that were not now available over the existing station, or available to the area which they propose to serve? One of those was what he called "Safety Flashes." Can you tell us whether or not WKBB broadcasts anything along that line?—A. I still cannot understand what is meant exactly by Safety Flashes there. As far as the station is concerned we have on numerous occasions broadcast safety talks by officials of the city government and the county authorities.

Q. Have those broadcasts been on safety subjects?—A. Oh, yes.

Q. Do you have anything like that on a regular basis?—A. We have at 6:45—it was scheduled up to the time I left; I assume that everything is continuing along—to 7:00 every Monday evening set aside for safety talks.

221 Q. He also mentioned weather reports. I believe you have covered that in your testimony.—A. Yes.

Q. He also mentioned the Telegraph Herald women's program. Do you have anything similar to that?—A. We carry two women's programs daily, one of our own origination at 9:30 each morning for 15 minutes, and one originating from the Affiliated Broadcasting Company at 10:30 each morning.

Q. He also mentioned Book Reviews. Do you have anything similar to that?—A. We have a Book Review each Monday afternoon. The time I believe is 4:30.

Q. He also mentioned a Morning Devotional period to be conducted by the Ministerial Association. Do you have anything similar to that?—A. The Ministerial Association conducts a Sunday morning devotional period over our station each Sunday morning. In addition we have a church service program originating from the studios of the Affiliated Broadcasting Company at 9:00 o'clock each weekday morning.

Q. He also mentioned news commentators. Do you have anything similar to that?—A. We have a program of news comments on each Monday and Thursday evening at 8:15.

Q. He mentioned sheriff's programs. Do you have anything like that?—A. We have offered the facilities of the station to

the sheriff's office, and we broadcast numerous reports from the sheriff's office each da.

Q. How about the Police Department?—A. The same would apply to the Police Department.

Q. I think he also mentioned travel talks.—A. We have a period each Thursday evening, I believe it is at 7:45, with reminiscences of the history of Dubuque and travel talks as conducted by Bertha Lincoln Huestis, who is quite well known in Dubuque.

Q. He also mentioned sports reviews. Do you have those?—A. We have a sports review each weekday evening at 6:00 o'clock.

By Mr. LOVETT:

Q. A. B. C.?—A. No; local.

Mr. ROLLO. I think that is all.

The EXAMINER. Cross-examine.

222 Cross-examination by Mr. LOVETT:

Q. You say you came to WKBB in March?—A. March the 28th of this year.

Q. When you arrived there do you recall the manner in which the station announcements were made?—A. How do you mean?

Q. Would you state whether or not the announcements were to this effect: "This is Station WKBB, Tri-State Radio, Voice at the end of the Dial, Dubuque, Illinois?—A. No; I don't recall of it having been made Dubuque, Iowa, but East Dubuque, Illinois.

Q. Did you make any change in the announcements when you arrived?—A. I did. I made a change after I arrived immediately to include Dubuque, Iowa, because Dubuque, Iowa, was not in before I arrived.

Q. Do you recall of there being any such announcement before then?—A. I do not.

Q. Did you make any changes in the point of origin of the programs, that is, as between the East Dubuque studio and the Dubuque studio?—A. I think I changed from the standpoint of what I considered greater operating efficiency on the way they handled the programs, because before my arrival the program was more or less back and forth to a greater or less extent from Dubuque to East Dubuque, whereas I grouped a number of programs together to make much better operation in Dubuque and East Dubuque.

Q. Do you happen to know what percentage of the programs were originating in Dubuque when you arrived?—A. In Dubuque? Well, I know less than 50 per cent when I arrived. That is all I know, because I didn't know exactly what the programs were before I got there. I know what happened when I got

there. I can't testify as to what happened before I did arrive there.

Q. You have been very careful about that since you arrived?—A. Oh, yes; very much so.

Q. Mr. Carpenter, I refer to WKBB Exhibit 18, being the network and local program division of the local programs, and they are listed at 93 hours and 55 minutes, representing 43 per
223 cent of the total time. Can you state what part of that 43 per cent was local talent, what part was transcriptions, or mechanical recordings or studio announcements, such as the reading of agricultural reports and weather reports, and so forth?—A. The only think I could give as to that would be to make this comparison: 73½ per cent of our total time was taken over by live talent, both local and chain, whereas I show that only 57 per cent of our programs were chain. Consequently, there must have been some 16 per cent of the local time devoted to live talent.

Q. You are referring to Exhibit 19?—A. I don't have the numbers.

Q. That is the talent and transcription analyses for two weeks?—A. Yes.

Q. And you state that of this live talent of 73.5 per cent about 16 per cent would be local live talent, is that right?—A. If my subtraction is correct: yes.

Q. Of course, your transcriptions and your phonograph records are of local origin, I presume?—A. Oh, yes.

Q. Referring to Exhibit 22, being the program analysis for the two-week period, August 30th to September 12th, can you indicate what percentage of the popular music which is here shown to be 30.7 per cent of the total of 220 hours originated locally?—A. I can figure it up for you by going through all of these programs.

Q. Well, I do not mean right down to the exact figure, but just approximately. Would about the same percentage prevail? You stated about 16 per cent of that was local.—A. I don't know. There might be more than that, because there are orchestras such as Anson Week and his orchestra, some of the rest of them appearing at Melody Mill, which are local live talent broadcasts, and not chain, together with certain programs such as the Try and Stump Us program, and others; and without going through all of them I don't know what that would be. It might be around 16 per cent and it might be a little more.

Q. Do you think more than half of your popular music comes from local live talent?—A. Oh, by no means.

Q. Local live talent?—A. You mean local live talent, half of the locally originated popular music?

Q. No; I imagine this refers to——A. (Interposing.) That includes chain and everything else. You mean more than half of that local?

224 Q. Yes; is more than half of that local?—A. No; not more than half of that is local, but much less than half.

Q. The majority of it is chain or transcription?—A. That is right.

Q. What do you have to say regarding the next item, Sports?—A. Sports is practically all chain during the summer months when there are not so many sports activities in Dubuque. Those are broadcasts of the National and American League baseball games direct from Chicago.

Q. Now, the next item is semiclassical music.—A. Most of that would be over chain.

Q. And news?—A. The majority of that would be local.

Q. Mostly Trans-Radio?—A. Trans-Radio, yes; but produced locally from our own news editor.

Q. After your educational item you have after that "exclusive." What does that mean?—A. I explained that, I believe.

Q. I am sorry.—A. In the early part of the testimony when I gave an explanation of each one of these headings. Do you want me to give it again? I think I can.

Q. That is all right. I did not recall. Is that originated locally?

The EXAMINER. He has gone over all of these once, but, of course, I want you to cross-examine him on any of them you wish.

Mr. LOVETT. I am especially anxious to know which is local live talent.

The EXAMINER. Go ahead. I do not want to restrict your cross-examination in the least, but I do not want any repetition of going over the whole thing again

By Mr. LOVETT:

Q. As to the educational item, what percentage of that is local?—A. Picking percentages out of the air is a tough job.

Q. Would it be one-quarter?—A. I frankly don't know without going through the programs. I don't see how I can estimate it.

Q. As to classical music, these various music items would be about the same proportion?—A. I assume so, although I really can't give that. It took me many hours to prepare

225 this [indicating] and get percentages, and I didn't do it with just saying I think it is about so much.

Q. You mentioned a Book Review broadcast several times. Who gives that?—A. It comes over the Affiliated Broadcasting Company at 4:30, I believe it is, on Monday afternoons.

Q. In Exhibit 22, WKBB program analysis from April 1st to September 12th—do you have that there?—A. From April 1st to September 12th? Yes.

Q. Where is the Fashion Parade originated, which is listed third from the bottom?—A. It originates in Chicago and is presided over by a woman by the name of Hazel Lighter, who is, I believe, a recognized authority on fashions.

Q. Who is the book man on the second page?—A. The book man originates locally from knowledge supplied by the W. F. Quarrie Company.

Q. Is that a local book store?—A. It comes to us out of Chicago the same as it does to, I think, some 400 radio stations in the United States.

Q. It is mimeographed release?—A. It is a mimeographed release.

Q. Under the heading on page 2 "Miscellaneous" you have listed a large number of talks. Can you state how many of these have been broadcast more than once?—A. Yes; I can.

Q. During this period from April 1st to September?—A. Yes; I can.

Q. Will you state that, please?—A. City Manager Evans has talked over the station three times; Chief of Police Giellis has talked once. Do you want me to take each one of them in order?

Q. Yes.—A. City School Superintendent E. D. Cline has talked once. Professor A. C. Kleine has talked twice over the station. County School Superintendent Thomas Flynn has appeared once. The University of Dubuque President Dale Welsh has appeared twice. Doctor Connell himself of the City Health Department has appeared upon it once, but numerous representatives of his have appeared. The Arch Diocesian Superintendent of Schools, Monsignor Wolfe, has appeared over the station two or three times, once in a three-hour broadcast, once also in a 15-minute talk, and I am not sure about the other time without checking the records.

226 The principal of the Senior High School, Mr. Johnson, has appeared personally once, but his representatives at other times.

Mary Zenter has appeared once.

Professor Schroeder has appeared once.

C. E. Rhodes, the president of the Safety Council, has appeared once.

King Herr of the Safety Council has appeared once.

Father Martin of Columbia Academy has appeared once.

A. A. Moore of the Junior High School has appeared once.

Noel J. Logan of the University of Dubuque has appeared either four or five times. I would have to check that up, too.

Samuel S. George of the University of Dubuque has appeared once.

Q. Do you know whether or not they have appeared very frequently prior to this two-week period?—A. Oh, this is not the two-week period. This is taken from April 1st to September 12th.

Q. Oh, excuse me.—A. That is the last five and a half months.

Q. You would not know before that?—A. I would not know before April 1st.

Q. Do you recall when the county school superintendent appeared, Thomas Flynn?—A. Within the past two weeks.

Q. There were several of those on your Labor Day program?—A. Yes; because that marked the opening of school, the same as we had a program at the close of school last spring.

(Discussion off the record.)

The EXAMINER. We will take a recess for 10 minutes.

(After a short recess the hearing was resumed as follows:)

The EXAMINER. All right; let us proceed.

By MR. LOVETT:

Q. On your last page, Farm Bureau, picnic, and dance remote broadcast, do you know where that originated?—A. That originated at Melody Mill.

227 Q. Melody Mill. What is Melody Mill?—A. Melody Mill is a dance palace and show grounds where all of the circuses and so forth, the large circuses, hold their shows, and it has a picnic ground and everything in conjunction where this Farm Bureau picnic was held.

Q. Now, in your week of WKBB program schedule starting on September 6th at 9:30 you have listed Uncle Ulmer Turner Reads the Funnies, 10 o'clock Melody Parade, and do you know whether or not there is a spot announcement made between those times for the Hilltop Casino, concerning the Hilltop Casino?—A. The Hilltop Casino is a dance hall, cafe and tavern located within a stone's throw of our transmitter in East Dubuque, Illinois. That spot announcement is limited only to the advertising of the chicken and steak dinners in the Casino cafe of the Hilltop Casino.

Q. It is a dance hall where liquor is sold, though?—A. Yes.

Q. Do you carry a program of announcement of Schmidts & Kato?—A. Yes, we do.

Q. What is that?—A. Beer.

Q. What about the Hilltop and Mulgrew and the Patch Beverage Company?—A. As to the Hilltop, Mulgrew and the Patch Beverage Company there is no connection between those two.

Q. Is it the Patch Beverage Company?—A. Yes. The Patch Beverage Company is the distributor for Schmidts & Kato.

Q. Patch (spelling), is that correct?—A. That is right.

Q. You mentioned that you had mailed certain program lists to the Telegraph Herald. You didn't see them personally or endeavor to make any arrangements over the table, but you merely mailed them to them?—A. I did not.

Q. You referred to a letter which was sent to Mr. Woodward. Was that letter addressed to Mr. Woodward, or a copy sent to him?—A. I explained the letter was addressed to Mr. Mathey of the Mathey Chevrolet Company, a copy of which was sent to Mr. Woodward.

Q. It did not call for an answer, did it?—A. Not necessarily, no.

Q. The program concerned was a sponsored program, was it not?—A. Yes; and also a very good advertiser in the Telegraph Herald.

Q. You referred also to a transcription which was run
228 over Station WKBB, and I believe dedicated to the Telegraph Herald. Was not the purpose of that transcription to secure sponsors?—A. What do you mean?

Q. Was not the transcription sold to the station with the idea that they would secure a sponsor?—A. Not for that particular program, no, because that was a program with which I was quite familiar, one of the transcriptions of the Radio Transcription Company which we had recommended to stations throughout the country for the purpose of extending their friendly relations between newspapers and radio stations, wherever those relations might have been in any way strained.

Q. It was purchased by WKBB?—A. It was purchased by WKBB.

The EXAMINER: Did you get any response to that dedication?

The WITNESS. You see, I was not connected with the station at that time. I was present when the first one of that series ran, and I knew that it did run, but I do not know of any responses that the station received.

The EXAMINER. All right.

By Mr. LOVETT:

Q. Since you have been connected with WKBB has it contributed to any community fund—money?—A. Oh, yes. I have seen passing through the mail the usual forms, or whatever it is they have come from the community fund for contributions made during the last drive last fall.

Q. By WKBB or the employees?—A. By WKBB, as I recall.

Q. Do you know the amounts?—A. No, I do not.

Q. That would be something within Mr. Klauer's knowledge?—A. Yes.

Mr. LOVETT. I believe that is all.

By the EXAMINER:

Q. Did they give any time to the Community Chest also?—A. You see, that campaign was held last fall.

Q. Before you were there?—A. Which would have been before my association with the station. I know they did give time because the records of the station very definitely show that.

229 Q. The log would show that, would it not?—A. Yes.

Mr. ROLLO. And Mr. Klauer testified to that when he was on the stand.

The EXAMINER. I believe that is right, that he did testify to that.

Cross-examine, Mr. Berry.

Mr. BERRY. I have nothing.

The EXAMINER. Any further questions?

Mr. ROLLO. No.

The EXAMINER. All right. The witness will stand aside.

(Witness excused.)

Mr. ROLLO. That completes the case of WKBB.

The EXAMINER. I would like to ask some questions, of Mr. Arndt.

Mr. LOVETT. I would like to recall him right now, if I may.

The EXAMINER. All right. You may recall him. Put him on the stand and then I will ask him my questions.

Whereupon W. J. ARNDT, a witness on behalf of Telegraph Herald, having been previously duly sworn, resumed the stand and testified as follows:

Direct examination by Mr. LOVETT:

Q. Mr. Arndt, can you state of your own knowledge whether or not the Telegraph Herald has ever refused advertising because it carried reference to a WKBB program?—A. No; we have never refused it if it carried reference to WKBB. The only possible refusal of any advertising copy as might be published in our newspaper would be contingent upon certain lottery rules and regulations, which I think every one is familiar with. That is federal law. You just can't enter your paper in the mail if there is a question of lottery, matter of chance, involved.

Q. Will you state of your own knowledge what, if any, support the Telegraph Herald has given to the Community Chest and similar organizations?—A. The Telegraph Herald has always been a very substantial contributor to all civic organizations. I know of my own knowledge that the maximum contribu-

230 tion to the Community Chest was $2,000, and the minimum was $1,000 in any one of the campaigns.

Q. State whether or not it has devoted space in its newspaper to the campaign of the Community Chest and other similar organizations.—A. Oh, yes, columns and columns of publicity.

Q. Was it freely given?—A. Absolutely.

Q. State whether or not the Klauer Manufacturing Company, or the Hotel Julian-Dubuque, has advertised in the Telegraph Herald, or do they advertise now?—A. Not to my knowledge.

Q. Who is the Julian-Dubuque Hotel owned by?—A. The owner of the Julian Hotel is William H. Klauer.

Q. When you were previously on the stand you referred to two broadcasts of WKBB to which you listened very carefully throughout the broadcast day, namely, on September 2nd and September 6th. I hand you a tabulation which is marked "Applicant's Exhibit 11," and ask you to explain what that is.—A. This happens to be a résumé of the broadcast of WKBB, taken by me on September 2nd while I was sitting at my radio in my home. I made accurate check on the total broadcasting from 7 in the morning until 11 p. m.

Q. All of the data thereon was prepared by you, was it?—A. It was.

Q. And it is accurate?—A. It is.

Mr. LOVETT. I offer that in evidence as Applicant's Exhibit 11.

Mr. ROLLO. No objection.

The EXAMINER. Applicant's Exhibit 11 of the Telegraph Herald will be admitted in evidence.

(The document referred to was received in evidence, marked "Applicant's Exhibit No. 11; Docket No. 3967," and is filed with the transcript in the possession of the Commission.)

By Mr. LOVETT:

Q. I now hand you a tabulation marked "Applicant's Exhibit 12," and ask you if you will explain that.—A. That is substantially the same as already covered for September 2nd, and if you wish, I will explain it.

Q. Is it the same type of tabulation, only for September 6th?—A. That is correct.

231 Q. And it was taken down by you at that time?—A. That is correct.

Q. The tabulation was prepared by you?—A. Yes.

Q. It is correct?—A. It is.

Mr. LOVETT. I offer that in evidence as Applicant's Exhibit No. 12.

The EXAMINER. Let it be admitted.

(The document referred to was received in evidence, marked "Applicant's Exhibit No. 12, Docket No. 3967," and is filed with the transcript in the possession of the Commission.)

The EXAMINER. What is the purpose of it, Mr. Lovett?

Mr. LOVETT. It is a break-down showing the local talent, percent of local talent and so forth for those particular days.

By the EXAMINER:

Q. Mr. Arndt, I am calling your attention to WKBB Exhibit No. 1, a copy of the Telegraph Herald, Dubuque, Iowa, Friday, August 9, 1935, page 7, in the last column, headed "Radio Program." I wish you would state whether or not that is a paid program.—A. No; that is not a paid program. That is a program in line with the policy of the daily newspapers, known as the Iowa Daily Newspaper Press, as regards advertising of radio programs of the major larger clear channel stations and networks.

Q. This radio program, dated Friday, August the 9th, includes National Broadcasting, WEAF network, does it not?—A. That is correct.

Q. And under the designation "South" it is noted as a part of this program coming from Station WRVA and WTAR?—A. Yes.

Q. Those happen to be stations located respectively at Richmond, Virginia, and Norfolk, Virginia?—A. I think so.

Q. Yes. Is it the policy of your paper to not publish local programs except that they are paid for?—A. I believe I covered that. We were never approached on the matter of publishing the local station's listing. I can't regard that a copy of a letter sent to our publisher, intended for one of our advertisers,
232 would be sufficient grounds for us to make an arrangement of that kind that involves considerable space in the paper. The only thing a daily newspaper has to sell is white space.

Q. Do not the other newspapers in the State of Iowa carry these programs without charge as a news item of interest to the communities in which they are published?—A. I couldn't say as to that. It depends upon each individual newspaper policy.

Q. Do you know of a newspaper in your state that does charge for the local programs of the stations that are operated in the cities where these papers are published?—A. Yes. That was brought up in the meeting not so very long ago. There is a total of 8 out of the 27 daily newspapers in Iowa that charge the regular rate for radio programs. One is very near to Dubuque, the Clinton Herald.

Q. You would run these if they were paid for, in other words?—A. Absolutely; we would be interested in that.

Q. But would not run them as a news item of interest?—A. No.

Q. But you do run as a news item these National Broadcasting listing of stations as remote as Richmond, Virginia, as news

item information?—A. Because of the simple fact that they are all included.

Q. In a network?—A. In a network, and the listing would have to be accurate.

The EXAMINER. Yes. That is all.

Cross-examination by Mr. ROLLO:

Q. Is there a radio station in Clinton, Iowa?—A. No, there is not.

Q. Do you know of an advertiser in Dubuque by the name of the Appel Higley Electric Company?—A. Yes.

Q. Does their advertising matter contain lotteries, or anything of that nature?—A. Not to my knowledge.

Q. Have you ever refused any advertising submitted by that company?—A. I stated before the only reason we would refuse advertising——

Q. (Interposing.) Just answer my question. Have you? Do you know whether or not you have ever refused it?—A. No.

233 The EXAMINER. Let him answer yes or no and then you can explain it afterwards.

The WITNESS. I don't know.

By Mr. ROLLO:

Q. What is your position with the newspaper?—A. I am circulation manager and member of the board of directors of the corporation.

Q. It is possible then you would not know all of the details of what advertising had been accepted and what advertising had been rejected, is it not?—A. I would be familiar with practically all of it, I would say.

Q. You are not the advertising manager, however, of the newspaper?—A. No; I am not. That is a job in itself, Mr. Rollo.

Q. How many hotels are there in Dubuque?—A. Six or seven in my judgment.

Q. Including the Julian Hotel?—A. Including the Julian Hotel.

Q. Do any of those hotels advertise in the Telegraph Herald?—A. Not that I can recall offhand.

Q. Do you consider the Klauer Manufacturing Company a local advertiser of Dubuque?—A. You mean from our standpoint?

Q. Yes.—A. Yes.

Q. What would the Klauer Manufacturing Company advertise locally?—A. In the first place, I imagine they would advertise the facilities of their hotel.

Q. I am speaking of the Klauer Manufacturing Company, and not the Julian Hotel. I repeat my question: Would you consider the Klauer Manufacturing Company a local advertiser from your point of view as a newspaper man?—A. Yes.

Q. All right; what would they advertise locally?—A. The products they manufacture.

Q. What products do they manufacture?—A. Snow Goes.

Q. What are Snow Goes?—A. I went through that yesterday. It is snow-removal equipment.

The EXAMINER. I think he covered that yesterday.

The WITNESS. Steel fabrication and culverts, and things of that nature.

234 By Mr. ROLLO:

Q. Do they manufacture anything that would have a market to the citizens of Dubuque?—A. From the standpoint that they would be interested in a dealer tie-in; yes. Do I make myself clear?

Q. No; I don't understand the answer.—A. From the standpoint of the newspaper the hotel manufacturer sells jobber, and in order to get his products on the market he will advertise it from a national standpoint to all the jobbers that he might have, and then there is a jobber tie-in of the advertising appropriation.

Q. They would be a national advertiser, as I understand you.—A. They would be local and national.

Q. But all of their products are large, heavy machinery and equipment, and that sort of thing?—A. I don't know whether all of it would be large.

Q. Does the Klauer Manufacturing Company have any local dealers in Dubuque, Iowa, do you know?—A. I don't know.

Q. You wouldn't know, then whether any of their local dealers advertised in your newspaper?—A. I don't know.

Mr. ROLLO. That is all.

By the EXAMINER:

Q. Mr. Arndt, you reside there in Dubuque and have for a great many years. Suppose you wanted to hear a program over the local station there at East Dubuque. How would you find out what time the program that you wanted to hear was coming on?—A. You mean the station?

Q. It is not published, and I understand that they are not published at all, their programs?—A. We don't publish their listings.

Q. You don't. The listings of the programs are not published?—A. Not in our paper.

Q. In your paper?—A. They are published, however, in the Catholic Daily Tribune.

Q. Regularly?—A. Yes; daily. And sometimes they are listed once a week by the Dubuque Leader.

Q. That once a week listing is for the whole week's programs, or is that just for the daily programs?—A. I think it is for the whole week.

235 Q. That is the only avenue by which the listening public would be able to find out the different times that various programs would appear in the paper?—A. No. They naturally would have a listing of their programs over their own station.

Q. I understand. Do they announce in the morning what they are going to have for the whole day?—A. Not on the specific days that I took this accurate transcript they did not.

Q. Do they every morning or every day announce what their entire program will be for that day?—A. I don't know. I don't listen in.

Q. If they didn't they you wouldn't be able to find out through the station itself what the particular program was that you were interested in?—A. That is correct.

The EXAMINER. That is all; unless there is something else.

Mr. LOVETT. May I ask just one final question?

The EXAMINER. Yes; go ahead.

Redirect examination by Mr. LOVETT:

Q. What is the largest hotel in Dubuque?—A. The Klauer-Julian, in fact one of the largest in the Mid[illegible]west, along the Mississippi River especially.

Q. Are there any other local hotels that compare with it in size?—A. No. They are not comparable, I would say, in size, in convenience, and so forth.

Mr. LOVETT. That is all.

By the EXAMINER:

Q. Could you tell us as to these other programs? You have seen these programs that they have that appear in these other newspapers?—A. Yes, sir.

Q. Could you tell us approximately what it would cost to advertise those programs in your paper? Just give us an estimate of it per day as to the daily cost, or weekly, or monthly.—A. On a yearly contract approximately $4 daily.

Q. $4 a day?—A. Yes. I have figured it here on the basis of a single column by six inches deep. Now, that may measure a little more or a little less.

The EXAMINER. That is all. You may stand aside.

236 (Witness excused.)

The EXAMINER. I would like to have Mr. Carpenter take the stand again.

Whereupon—JAMES D. CARPENTER was recalled as a witness on behalf of WKBB, resumed the stand, and testified further as follows:

Examination (resumed) by the EXAMINER:

Q. Suppose I happened to be visiting in Dubuque, Iowa, and I wanted a certain program on your station, where would I get the information as to the time it would appear in your program?—A. Either by telephone to the station, and we would give the reply, or as is usually our custom to daily give a program resume, which is not always done, but it is the usual custom to do so.

Q. But suppose it happened to be on a day when you did not do it?—A. On the day when we did not do it you would have to see it in the Catholic paper there, or if it was for certain days of the week at the week-end you could get it out of the Dubuque Leader, which is published there I believe four days a week, Thursday, Friday, Saturday, and Sunday.

Q. As to this Catholic newspaper, is it published every day?—A. Yes, they publish it every day.

Q. And they publish the program?—A. Yes.

Q. Without charge?—A. Without charge. Of course, it reaches a very limited number of people in the Dubuque area.

The EXAMINER. That is all. You may stand aside. Is there any further testimony in this case?

(Witness excused.)

MR. ROLLO. No, sir. We rest our case.

The EXAMINER. If there is no further testimony in the consolidated hearing of Dockets No. 3967 and No. 4031 the hearing will be closed.

(Whereupon at 3:20 o'clock p. m., the hearing in the foregoing matters was concluded.)

* * * * * *

237 [Endorsed:] Federal Communications Commission, Sept. 8, 1936. Received 1st Mail. Mail and Files. File No: B4-P-960. Docket No. 3967. In re: Application of Telegraph Herald (new), Dubuque, Iowa, For Construction Permit.

Depositions of witnesses in the above-entitled matter were taken before John W. Kintzinger, Jr., a Notary Public for the State of Iowa, Dubuque County, Iowa, pursuant to an Order of the Federal Communications Commission in that regard, dated August 10, 1936, at the Chamber of Commerce Building, Dubuque, Iowa, on Friday, August 21st, 1936, beginning at 9:00 o'clock A. M.; all in accordance with the order to take depositions attached to the following page:

Appearances: For Applicant: Mr. Eliot C. Lovett, Attorney at Law of Washington, D. C., appeared, representing The Tele-

graph Herald, and took part in the examination of witnesses. Mr. H. G. Wall, Attorney at Law of Detroit, Michigan, appeared, representing Toledo Broadcasting Co.—WSPD, and took part in some of the examination of witness. Messrs. F. D. Gilloon & Milton Glenn, and Thomas Nelson, of the firm of Gilloon & Glenn, Attorneys at Law, Dubuque, Iowa, appeared, representing Sanders Brothers Radio Station, WKBB, East Dubuque, Illinois, and took part in the examination of all the witnesses, Frank D. Gilloon doing the questioning on cross-examination.

239 Mr. KERMITH S. HUEHN, called as a witness on the part of the Applicant, after having been first duly sworn by myself as Notary Public, testified as follows:

Direct examination by Mr. LOVETT:

Q. Mr. Huehn, will you please state your name, address, and occupation?—A. My name is Kermith S. Huehn, the County Agricultural Agent at Manchester, Iowa.

Q. Mr. Huehn, will you state whether or not you are familiar with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Mr. Arndt has conferred with me in this matter, and I believe I am quite well familiar with the plans that are being advanced.

Q. Mr. Huehn, will you state, if you can, of your own knowledge, what has been and is the attitude of the Telegraph Herald toward the farmers of this area in relation to the dissemination of news and information regarding the farm problems?

Mr. GILLOON. We object to that as calling for an incompetent conclusion of the witness and immaterial.

A. The Telegraph Herald has on several occasions made a special effort to give agricultural news and assisted to carry a farm page regarding pertinent farm news.

Mr. GILLOON. We move the answer be stricken out for the reasons urged in the objection and not the best evidence.

Q. Mr. Huehn, will you state the present type of radio programs, if any, received in this area, particularly in your county, of interest to farmers?—A. The farmers naturally are interested in radio programs——

Mr. GILLOON. We move that that answer be stricken out as a conclusion of the witness and not a statement of fact.

Mr. LOVETT. Let him answer first.

A. The farmers are not well served so far as the radio broadcast is concerned, due to the fact that they have no local news broadcast over any local stations to my knowledge; they do have programs over topics of general nature.

Q. What hour is that?—A. It is during the noon hour—national.

Q. It is the National Farm Home Hour?—A. Yes.

240 Q. You say that is not localized?—A. That is not localized; that is general information.

Q. What, if any, experience have you personally had in broadcasting?—A. Several years back I broadcast from Waterloo, the station at Waterloo; and I have on one or two occasions broadcast through the Des Moines station and six or eight times through the East Dubuque station.

Q. Why did you discontinue those broadcasts?—A. The programs on the first two named stations were discontinued on their own accord for reasons I know not why. For the East Dubuque station it was—we requested to be dropped because their broadcasts were not heard by my farmers and there seemed to be a very poor tie-up regarding farm programs.

Mr. GILLOON. We move that that be stricken out as an incompetent conclusion of the witness—the broadcasts not heard by farmers and there seemed to be a very poor program hook-up——

Q. I will ask you——

Mr. GILLOON. —and hearsay.

Q. —what do you as agent consider the type of program which would be most beneficial to the farmers in your area?—A. It seems to me that the general farm topics are carried quite well through our own local papers and others, and the broadcasts which they would be interested in would be such as would be personalized, as would be applied to their local problems; it might be different from those of other communities.

Q. In what agricultural pursuits are the farmers in your area engaged?—A. We are largely an agricultural county concerned largely with dairy cattle and hogs. Presumably you might call it a livestock county.

Q. And that is the type of program you would propose to get to those farmers; is that correct?—A. Yes.

Q. Will you state to what extent, if any, you would be willing to cooperate and carry broadcasting programs over the station proposed by the Telegraph Herald in accordance with the plans stated to you by Mr. Arndt?—A. Mr. Arndt has gone over the proposed plan with me and it seems to me it would be most advisable to have a broadcast at least once a week from

241 each county concerned; and that seems to me would be the best arrangement for the situation.

Q. You would be willing to appear once a week personally or by representative to broadcast the program for your county?—A. Yes; I would.

Q. Will you state what, if any, other use you might make of those facilities?—A. It seems that there is other uses the radio station might be put to, that is, for broadcasting information

that might come up almost on the spur of the moment, and special meetings and things that farmers would be vitally interested in.

Q. Would you have emergency information that might be broadcast if these facilities were available at the present time?—A. Well, right now, if we could get on the air and tell the farmers what could be done with this drought damaged corn, it certainly would mean much to the farmers for the coming winter.

Q. What about the grasshoppers?—A. The grasshopper control is a problem at the present time, and any information we could give would be of help in saving agricultural feed.

Q. I think that is all; you may cross-examine.

Cross-examination by Mr. Gilloon:

Q. You are the County Agricultural Agent of Delaware County?—A. Yes, sir.

Q. Delaware County is a county that adjoins Dubuque on the west?—A. That is right.

Q. You are stationed at Manchester?—A. That is right.

Q. Do you know how many miles it is from Dubuque, Iowa, to Manchester, Iowa?—A. Yes, sir.

Q. And how many miles?—A. 44 miles.

Mr. Lovett. By air line, or road?—A. That is by road; by Ford V-8 car.

Q. What is the air-line distance?—A. I do not know.

Q. The road from Dubuque to Manchester runs practically straight west?—A. If you consider a road can run straight. It is very crooked, but it does run practically west.

Q. Yes. Where is the city of Manchester located in Delaware County with reference to its east and west county line?—
212 A. If it were in the center it would be twelve miles from each side; it is sixteen miles from one side and eight miles from the west side.

Q. You say the county is 24 miles from east to west?—A. Twenty-four; yes.

Q. How many miles is it from Manchester to the northerly line of the county?—A. Eleven miles.

Q. And how many miles from Manchester to the southerly line?—A. It is twelve—thirteen, I should say.

Q. How many?—A. Thirteen.

Q. 13?—A. 13.

Q. Do you know the number of operated farms there are in Delaware County?—A. According to the 1935 census, 2,354.

Q. 2,354 operated farms?—A. Yes.

Q. Are you familiar with Station WMT, known as Waterloo and Cedar Rapids Station?—A. Yes, sir.

Q. Is clear reception available from that station in Delaware County?—A. Quite clear.

Q. Have you appeared on that station in speaking on your farm program?—A. Yes, sir.

Q. How frequently?—A. It used to be once a month.

Q. The service of that station was made available to you?—A. Yes.

Q. You also appeared over WHO, Des Moines?—A. We sent material to WHO for broadcast, prepared by myself.

Q. And your material was broadcast?—A. Not to my knowledge.

Q. You don't know?—A. It was reported to me by those who heard that it was not broadcast.

Mr. GILLOON. Well, of course, I move to strike out the answer as an incompetent conclusion, and hearsay.

Q. An invitation was extended to you to appear over WKBB?—A. Yes, sir.

Q. The East Dubuque Station?—A. Yes; that is right.

Q. And you did?—A. Yes, sir.

Q. Now you said that you would cooperate with the station for which the Telegraph Herald has applied if the application were granted, in carrying out the plans proposed to you by Mr. Arndt. Now what plans did he propose?—A. It is my understanding that they have in mind six agricultural County Agents broadcasting one day a week, and our county is to be one of the six.

243 Q. At what hour?— A. The hour to be chosen which is most desirable for agents and listeners.

Q. Well, what hour from your experience, what hour would you select as considered most desirable to you and to your listeners?—A. Perhaps the noon hour, from twelve to one or 11:30 to 12:30; it seems to me that is the proper time.

Q. And by your "listeners," you mean the farmers of Delaware County?—A. That is right.

Q. How far is Iowa City, Iowa, from Manchester?—A. If I remember correctly, it is fifty-two miles. I have driven it several times.

Q. You know that there is a radio broadcasting station located there under the letters WSUI?—A. Yes, sir.

Q. Have you ever, as County Agent, availed yourself of the facilities of that station?—A. No, sir.

Mr. WALL. Did you say yes, sir; or no, sir?

A. No, sir.

Q. The reception from that station is carried into your county?—A. I understand that it is. I have never been able to get it myself; but I understand that it is.

Q. Do you know the distance from Manchester, Iowa, to Ames, Iowa?—A. 150 miles.

Q. Our Agricultural College is situated at Ames, Iowa?—A. Yes, sir.

Q. Have you ever availed yourself of the facilities of that station to broadcast farm programs?—A. No, sir.

Q. Have you ever heard farm programs broadcast from that station?—A. Yes, sir.

Q. Reception from that station is clear and ample at Manchester?—A. Only fair.

Q. What hours do you refer to that it is only fair?—A. I have reference to noonday and just after the noonday programs.

Q. Well, you say "just after the noonday programs"?—A. No; I say the noonday and the afternoon day programs. That is from twelve to one; and the afternoon program.

Q. And that reception is clear?—A. To my knowledge it is. I don't listen to it otherwise.

Q. Do you know the power that is proposed to be allotted to this proposed station for which the Telegraph-Herald has applied?—A. It is my understanding that it is 500.

244 Q. Five hundred watts?—A. Yes, sir.

Q. The northern and northwestern part of Delaware County is located a greater distance from Dubuque than Manchester?—A. Slightly.

Q. And the same is true to the south and southwestern portion of the county?—A. Right.

Q. State whether or not the Department of Agriculture, the United States Department of Agriculture—withdraw that question. State whether or not the Agricultural College at Ames, Iowa, is putting out any information over the air with regard to the drought situation and grasshopper problem.—A. They are.

Q. The reception with reference to that comes into your community?—A. Yes, sir.

Q. You understand, as Farm Agent, that experiments are being carried on at the Agricultural College at Ames as to how to deal with the grasshopper problem?—A. As far as that locality is concerned, yes.

Q. And as far as any locality in Iowa is concerned?—A. Generally speaking.

Q. What will curb the grasshopper in one community will in another, won't it?—A. Yes, quite largely; but our specific problems are not covered entirely by the College.

Q. You say that in Delaware County that the farms are principally devoted to dairying and raising hogs?—A. Yes.

Q. Feeder cattle?—A. Not very many feeder cattle.

Q. That same thing is practically true in Dubuque County, is it not?—A. That may be; I am not familiar.

Q. The same general condition exists in Jackson and Jones Counties?—A. It is quite possible; I am not familiar with those counties.

Q. And Linn County?—A. Possibly.

Q. And in Buchannan County to the west?—A. I know that in Buchanjnan County it is.

Q. And also in Blackhawk?—A. Yes, sir.

Q. That is all of the same character of farming that is carried on in all those counties?—A. Yes.

Q. The same is true of those farms immediately to the north?—A. Yes; though they have quite hilly country, it is about the same.

245 Q. Well, they are in the dairy business, or production?—A. Yes, that is right.

Q. How long have you been the County Agent in Delaware County?—A. Very nearly five years.

Q. If you were to select an hour during the day——A. Pardon me?

Q. If you were to select an hour for broadcasting your program—making your selection; that is, your own choice—other than the hour between one and twelve noon, what other hour would you consider the best hour for farm audience?—A. Perhaps the breakfast hour at seven o'clock or the supper hour at 6:30. I have no preference between those two.

Q. That is, between the early morning hour and the supper hour, which would you consider most preferable?—A. It would seem to me the morning hour would be preferable.

Q. Would be preferable?—A. The morning hour would be preferable.

Q. You think the farmer has more time in the morning than he has in the evening when his work is done?—A. The major portion of them are found around the breakfast table at that hour than they are at the supper hour at that hour in the evening according to my information.

Q. Have you been told what hours of this station—what time it will be given if the application were granted?—A. They have left that to us to make that decision.

Q. No, but have you been told what hours this station that the Telegraph Herald has applied for will operate?—A. I have not.

Q. That is all.

Redirect examination by Mr. Lovett:

Q. Mr. Huehn, state whether or not the facilities of either WSUI or WOI have ever been offered to you?—A. They have not; not to my knowledge.

Q. That is all.

Recross-examination by Mr. GILLOON:

Q. Have you ever asked for the facilities of those stations and been refused?—A. We have asked for the WOI station
246 but it has not been granted. We have never asked for the other station.

Q. When did you ask for that station?—A. A couple of years ago.

Q. Just once?—A. Yes.

Q. Do you know the reason assigned?—A. The reason was that it was not convenient for them to work it into their schedule. No antagonism at all.

Q. That was, the particular hour that you requested?—A. Yes.

Q. You could have had a different hour?—A. Perhaps; we didn't ask for a different hour.

Q. That's all.

Cross-examination by Mr. WALL:

Q. How far did you say Ames, Iowa, is from Manchester?—I am representing the Toledo Broadcasting Company, WSPD, Toledo, Ohio. How far do you say Ames, Iowa, is from Manchester?—A. 150 miles.

Q. Do you know the power of that station; how many watts it operates with?—A. I do not.

Q. Do you know the frequency it is on?—A. I do not.

Q. Do you ever listen to it?—A. Yes sir.

Q. You just don't remember?—A. It is 687 or some such a number on my radio.

Q. If I told you it operated at 5000 watts, would that refresh your recollection?—A. It would not.

Q. If I told you it operated at 600 frequency——A. I am not familiar with those terms.

Q. —on your radio dial, do you know the number you tune in on your radio?—A. It is between six and seven hundred—I don't remember.

Q. That station is operated by your State College?—A. Yes.

Q. Your Agricultural College?—A. Yes; that is right.

Q. Operated by the State of Iowa?—A. Yes.

Q. It operates during all the daylight hours?—A. I can't answer that.

Q. How many times do you listen to WOI?—A. Generally during the noon hour.

247 Q. Do you drive a car?—A. Yes sir.

Q. Do you have a radio in your car?—A. No sir.

Q. Do you know whether Station WOI broadcasts any agricultural programs?—A. Yes, they do.

Q. Quite a few?—A. Yes sir.

Q. Isn't it a fact that that station is devoted principally to broadcasting programs for farmers in Iowa?—A. Principally, yes.

Q. Did you ever listen to other stations in Iowa? Did you ever listen to them in Dubuque, for instance?—A. I do not.

Q. Do you ever listen to them in any other place?—A. No.

Q. Did you ever listen to them in anyone else's house in any other city?—A. I have not.

Q. The reception that you get on your radio on WOI in Manchester is good, isn't it?—A. Fairly good on my radio.

Q. What kind of a radio have you got?—A. A Brunswick.

Q. A new one?—A. No sir.

Q. How long have you had it?—A. Four years.

Q. A battery set?—A. No sir, an electric set.

Q. Works off a socket?—A. Yes.

Q. In Manchester have you ever listened to WOI on a new radio set in the last year or so?—A. I have never had the opportunity, no.

Q. Do you know what frequency this particular station here in Dubuque is applying for?—A. I do not.

Q. Has anybody advised you that on the frequency requested and the power requested that the signal will come into Manchester? If so, who?—A. If you are referring to "frequency" I can only indicate I am not an engineer. If you mean the number on the dial; they have told me it will be around 1400 on the dial.

Q. Their application is 1340.—A. I think that is correct.

Q. Has anyone told you that with the power indicated, at 1340, it will come in at Manchester?—A. Mr. Arndt.

Q. And where does Mr. Arndt live?

Mr. LOVETT. Objected to as this man is not an engineer.

A. At Dubuque.

Q. How far away is Iowa City from Manchester?—A. To my recollection, about fifty-two miles.

Q. You have listened to the radio station at WSUI?—A. No sir.

248 Q. Have you tried to?—A. Yes sir.

Q. Iowa City is 52 miles, and Dubuque is 44 miles from Manchester?—A. Yes.

Q. Have you ever tried to listen to WSUI on any other radio than your own?—A. I have not.

Q. How far is Des Moines from Manchester?—A. 169 miles.

Q. Have you ever listened to radio station WHO at Des Moines?—A. Not very often.

Q. Have you tried to?—A. Yes sir.

Q. Is it good reception?—A. It is not.

Q. Have you listened to any of the Chicago stations on your radio at Manchester?—A. Frequently to WGN.

Q. Anyone else—Any others?—A. No.

Q. WBBM?—A. No.

Q. WMAQ?—A. No.

Q. Have you ever tried to listen to any other station other than WGN?—A. I did when I first came to Manchester.

Q. You just don't do it any more?—A. That is right.

Q. Have you listened to the Madison, Wisconsin, station?—A. What?

Q. Madison, Wisconsin; did you know there is a Madison, Wisconsin station at the University of Wisconsin?—A. Yes. Very seldom do we get that station clearly.

Q. You haven't recently tried to get time on WOI?—A. No.

Q. You haven't requested any time for over two years, or about two years?—A. That is about right.

Q. So you don't know today whether or not you could get time on that station for your program?—A. I do not know.

Q. They have programs there with reference to all the farm problems that are generally applicable to Iowa?—A. Generally, yes.

Q. In what particular would your program differ from the programs they have at WOI?—A. If we could have farm meetings—if we had a particular problem—I am saying this generally—such as salvage corn; our problem is different than they have at Ames. They would not be concerned with discussing our problems.

Q. You mean you think they wouldn't be. Have you ever tried it?—A. I know.

249 Q. It is a State College?—Yes sir.

Q. Your farmers pay taxes to run that College?—A. Yes; but they can't broadcast programs applicable only to Delaware County when the other counties are listening in.

Q. You don't know that?—A. I say they haven't done it.

Q. Oh, they haven't done it?—A. That is right.

Q. This station that is now located in East Dubuque; does it come into your county at night?—A. The station in East Dubuque?

Q. This station in East Dubuque, does it come into your county at night?—A. When it first operated, while I was broadcasting I made a check several times and never yet did a program come in, even to the east edge of the County.

Q. How long ago was that?—A. About a year ago.

Q. You say you made a check? How did you check it?—A. I asked five people—friends of mine—who I knew would give me the truth, to determine.

Mr. WALL. I move that answer be stricken out and the former answer.

Mr. LOVETT. You have asked him to determine; now let him answer.

A. I have asked five farmers over the county to tune in their radio on this particular wave length, and they have given me the answer that they were unable to hear the program which I personally broadcast.

Q. What number on your dial is the East Dubuque station?—A. It is about 1500.

Q. And what is the power of that station?—A. I understand 500. It was, I think 250, and they asked for more and they told me they were raising it to 500. That is the reason we continued to broadcast; so if that is false, it is a false impression.

Q. I think that is all.

Mr. GILLOON. I would like to ask one question if I may.

Mr. LOVETT. All right.

Recross examination by Mr. GILLOON:

Q. Mr. Huehn, would not the same problem that confronts you with reference to fodder corn in Delaware County also be present in practically all of the other eastern counties
250 of the State of Iowa?—A. It might, and it might not. I have seen situations when it might not.

Q. Well, as a general thing, it would?—A. Yes.

Q. That is all.

KERMITH S. HUEHN,
Witness.

Mr. FLOYD E. PRATT, called as a witness on the part of the Applicant, after having been first duly sworn by myself as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Mr. Pratt, will you please give your name, address, and occupation?—A. Floyd E. Pratt; County Superintendent of Schools, Delaware County, Manchester, Iowa.

Q. Mr. Pratt, are you familiar with the plans of the Telegraph Herald to establish a radio station at Dubuque to serve Dubuque and nearby counties?—A. Yes; I am.

Q. Will you state if you can, of your own knowledge, what has been the attitude of the Telegraph Herald toward rural education?—A. Well, I have been in my work at Manchester for the past three years as County Superintendent of Schools; and during that time I have noticed that the Telegraph Herald is always anxious to cooperate with us in anything that we wish to have published in their newspaper concerning the schools of

our county; and from an educational standpoint I consider them ready and willing to cooperate in anything that is of an educational nature.

Q. Mr. Pratt, to what extent, or in what manner would you make use of the facilities of the proposed station if they were offered to you?—A. Well, when I was first approached by the representatives concerning this matter I considered that it would have a very—furnish a very excellent way of putting the schools before the people of our county so that they would appreciate more thoroughly the educational attempts that we are trying to accomplish over there; in this way; we could broadcast to the people direct speeches on subjects of education that deal directly with what we are trying to do, directly to the people.

251 We could have question'aires over this broadcasting system pertaining to educational matters. We could broadcast—what shall I call them—concerts of bands; school bands; we could thereby bring a good deal of local color to this section of the State of Iowa, which to me, it seems at the present time is rather neglected.

Q. Could you make use of it on special occasions: graduations and emergencies?—A. I had understood that a wire could be run out so that we could broadcast by remote control some of our special occasions that I am sure would be of interest to the people out there.

Q. Do you contemplate making use of it for the purpose of emergency announcements?—A. Yes, we have opportunities to do that. In case of severe weather and the immediate closing of schools, when otherwise we wouldn't have any quick, direct means of making the information known to the patrons of the schools.

Q. Do I understand you would be willing to cooperate with the Telegraph Herald in its plan to have a regular weekly broadcast from each county each week?—A. Yes.

Q. Are there any radio receiving sets now in any of your schools or school auditoriums?—A. Yes, practically all of the Consolidated Schools have them.

Q. Are they used now to any great extent?—A. Well yes, they are used; that is—in just what way do you mean?

Q. Well, I mean, used in your educational work: in receiving programs of benefit to your students?—A. Well, to some extent, but not as much as it should be.

Q. Would the establishment of this station and the availability of the service as proposed; would it increase that use?—A. I had hoped that it would transpire that way at lease, yes.

Q. Would it tend to cause the installation of other receiving sets in other school units?—A. I think it would.

Q. And you feel that would be desirable in furtherance of your educational program?—A. Yes.

Q. That is all.

Cross-examination by Mr. GILLOON:

Q. Mr. Pratt, how long have you been County Superintendent of Schools of Delaware County?—A. For the past three years.

252 Q. Prior to that time where were you officiating, if you were in this same capacity?—A. Well, I was City, or Town Superintendent of Schools.

Q. Where?—A. In South Dakota.

Q. Now who was the representative of the Telegraph Herald who first approached you on this subject?—A. Mr. Arndt.

Q. And after your conversation with him you concluded that the establishment of the station applied for located in Dubuque would enable you to broadcast speeches on educational subjects so that they might be received by the schools in your county?—A. Schools and the homes, yes sir.

Q. Schools and homes in your county, and all parts of the county?—A. Yes.

Q. Now you said that—now what was your plan in regard to these speeches; were they to be your speeches?—A. Some of them, perhaps.

Q. And you would come to Dubuque, would you, to deliver those speeches over the radio at some particular hour of the day; is that your plan?—A. Yes, I would presume. I didn't think about the remote control at that time.

Q. Well, you wouldn't expect to get remote control out at your town continuously?—A. No.

Q. That would only be on special occasions?—A. Yes.

Q. And these questionaires that you speak of putting out on the air into the homes and schools of your county; that plan was to broadcast those yourself?—A. Yes, I could.

Q. Those would be questionaires of your own making?—A. Yes.

Q. And during severe and inclement weather you would announce the conditions and warn the fathers and mothers in respect to their children going to and from school at that particular time; is that your plan?—A. Warn them of hazards, yes sir.

Q. Now are there any stations that come into Manchester that carry the weather reports?—A. Yes sir.

Q. What stations are those?—A. Well, the ones that I listen to for the most part are WMT, WHO, and a couple of Chicago stations.

Q. Do you ever listen—well, you mean for weather reports?—A. Yes.

253 Q. What stations do you listen to with reference to educational programs that you would consider suitable for your schools and community?—A. Practically none.

Q. Did you ever listen to Station WOC at Ames—or WOI, at Ames?—A. Yes.

Q. How frequently?—A. Pardon me?

Q. How frequently?—A. Oh, twice a week.

Q. And what hours?—A. 12:30.

Q. Noon?—A. Yes.

Q. Do you have a radio in your office?—A. No, sir.

Q. You do your listening at home?—A. Yes, sir.

Q. What is your noon hour; that is, do you have more than one hour at noon?—A. Twelve to one.

Q. Twelve to one?—A. However, it is optional to some extent.

Q. Well, what is it, in fact?—A. Twelve to one.

Q. You listen to WOC about twice a week?

Mr. GLENN. WOI

Q. I beg your pardon; WOI twice a week?—A. Approximately, yes.

Q. Now, do you listen to any other station during that hour at any time during the week?—A. Yes.

Q. What station or stations?—A. WMT and WHO.

Q. Now, did you ever listen to WSUI, Iowa City?—A. It doesn't come in well on my set.

Q. You understand that Iowa City is approximately 52 miles south of Manchester?

Mr. LOVETT. Objected to as entirely immaterial.

A. Well, I don't know.

Q. Do you know how far Manchester is from Dubuque?—A. Yes; just about—about 45 miles, I guess.

Q. Do you know what the power is of the WSUI station at Iowa City?—A. No, sir.

Q. Do you know what the proposed power of this station is that is applied for by the Telegraph Herald, the one in question?—A. I think I do.

Q. What?—A. 500 watts.

Q. And in speaking of this use that you might make of that station if established, in broadcasting speeches and questionnaires and weather conditions to the people of Delaware County,

254 Iowa, you anticipate, of course, that that power will carry reception to all points of the county?—A. I understand that it will, yes.

Q. And if it would not, then your answers would be different?—A. Naturally; yes.

Q. Yes, and if that service would not extend to all points of the county so as to accommodate all the residents of that county who are interested in the public schools over which you are Superintendent, then you would not broadcast over that station these matters that you have referred to?—A. Well, entirely; do I understand?

Q. Well, I am asking you what you would do.—A. Is that your question: over the entire county?

Q. Yes.—A. With no exceptions? Well, I would like to have it universal over the county.

Q. If it were not universal, would it alter your action in that respect?—A. Well, it would depend upon what extent it was not universal. If it was only slightly under universal, why, I don't think it would alter it very much, if any.

Q. But you would expect to reach practically all of the county?—A. I would.

Q. Have you ever requested the facilities of WSUI, located at the State University at Iowa City?—A. No, sir.

Q. Have you ever requested the facilities of WMT?—A. No, sir.

Q. The Waterloo station?—A. No, sir.

Q. How far is Manchester from Waterloo?—A. Well, I can't state the exact number of miles.

Q. It is about midway between Dubuque and Waterloo?—A. Yes, I think it is; however, I am satisfied it is further to Waterloo.

Q. How much further?—A. A few miles.

Q. Well, what do you mean by "a few miles"?—A. Four or five.

Q. Yes; four or five at the outside. Now, what kind of a radio do you have in your home?—A. A Sparton.

Q. A Sparton?—A. Yes.

Q. And how many tubes, do you know?—A. I don't know; I think it is six.

Q. How old is it?—A. Oh, it is about four years old.

Q. Have you ever had it overhauled or tubes replaced since you got it?—A. It hasn't been necessary.

255 Q. Well, you haven't had it overhauled?—A. No.

Q. Now I believe you said you listened to, occasionally to WGN, Chicago?—A. Yes, sir.

Q. The Tribune station?—A. Yes, sir.

Q. And to WHO, Des Moines?—A. Yes, sir.

Mr. LOVETT. Please specify whether it is in the daytime or nighttime.

Q. Well, I think it is in the daytime.

Mr. LOVETT. Were you referring to the daytime or nighttime when you state you were listening to these stations? I would like to have it limited to the daytime. That is the only thing that is in issue. There is a considerable difference as you know.

Mr. GILLOON. Well, it is in the record now in the daytime I think; at the noon hour, between twelve and one.

Q. Well, that is one of the stations you mentioned, WGN, that you listened to at the noon hour?—A. I believe I stated "a couple of Chicago stations."

Q. Well is WGN one?—A. I guess that is one, I am not sure.

Q. That is 720 on the dial?—A. Yes.

Q. And what other station, Chicago station?—A. Well, it comes in on my set at about 870.

Q. That is WLS, Chicago?—A. I believe that is right.

Q. And you also listen to WMT?—A. Yes, sir.

Q. Waterloo?—A. Yes, sir.

Q. And WHO, Des Moines?—A. Yes, sir.

Q. Now those four stations; is the reception good on your radio?—A. Yes, sir.

Q. You also get clear reception from other stations?—A. Yes, sir.

Q. Not mentioned?—A. Yes, sir.

Q. Have you tried frequently to get WSUI at Iowa City?—A. Yes, sir.

Q. And could you always get it when you tried? A. Not satisfactorily, no.

Q. Well, I mean, you could always get it?—A. Yes.

Q. And you say the reception was not good at times that you did get it?—A. It was not good; no.

Q. Was it so bad that you couldn't hear what the speaker was saying, or understand the program if it were a musical program?—Yes, sir, at times.

256 Q. Always?—A. Not always.

Q. Sometimes it came in clear? I am referring to Iowa City.—A. No, I don't believe I ever got it real clear and good.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. I would like to ask a question on redirect. Some reference was made by Mr. Gilloon to the weather reports which you received over other stations. State whether or not in your direct testimony you referred to the necessity there, or desirability of weather reports for your particular area or general weather reports.—A. Those were general.

Q. It is your desire to use the proposed facilities for the purpose of getting reports and warnings of conditions in your particular area, and not generally, however?—A. Yes.

Q. And especially if such weather conditions might affect the opening or closing of the schools?—A. Yes, sir.

Q. Will you say whether or not the facilities of WSUI or WMT have ever been offered to you?—A. No.

Q. You mentioned a number of stations which you said you received on your radio. Will you state what stations you receive during the daytime consistently and satisfactorily, so that you want to listen to them over a period of time?—A. They are WMT, WHO, and the Chicago stations, but I don't know the lettering there.

Q. WGN?—A. Yes, and WLS.

Q. You can receive all of those whenever you want them, in a way which is perfectly satisfactory for listening purposes?—A. Yes.

Q. During the daytime?—A. Yes.

Q. Did you ever hear WKBB?—A. No; I don't even know where they are located.

Q. That is all.

Recross-examination by Mr. GILLOON:

Q. You don't know with what frequency WKBB operates?—A. No, sir.

257 Q. Nor where to find it on the dial?—A. No, sir.

Q. Have you ever requested the facilities of WMT or WSUI?

Mr. LOVETT. He answered that when you asked him on Cross-Examination, Mr. Gilloon.

Q. Well, you asked him if they were ever offered to him?—A. No, sir.

Q. They were never refused you?—A. No, sir.

Mr. LOVETT. Neither offered nor requested.

Q. Nor offered or refused?—A. No.

Mr. LOVETT. That's all.

FLOYD E. PRATT,
Witness.

Mr. JOHN W. GIELLIS, called as a witness on the part of the Applicant, after having been first duly sworn by myself as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Chief, if you will just state your name, residence, and occupation for the record?—A. He knows it, he has taken it down many times before. John W. Giellis, Chief of Police of Dubuque; residence 3115 Central Avenue.

Q. Chief, are you generally familiar with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes; I am.

Q. Will you state whether or not the Telegraph Herald has in the past, and is now cooperating with your Department in connection with your functions in the city of Dubuque?—A. Yes; they have at all times cooperated with us 100 percent.

Q. If the Telegraph Herald be successful in its efforts to establish a station here, to what, if any, extent will your Department make use of the facilities if they be freely offered to you?—A. Well, they would be extremely helpful to the Department in many ways. It would be probably be more hastily they would be able to get information to the surrounding communities, and in just a few minutes of time; as I understand it is their intention to cooperate with us in that respect.

258 Q. Do you refer to information regarding suspicious persons and lost articles and so forth?—A. In regard to any person we might be anxious to apprehend for the commission of any crime, or suspected of having committed any crime in the community; stolen automobiles and various other crime that we have reason to suspect people of committing; robberies and stick-ups and any nature whatsoever of crime. We are anxious to head off the escaping criminals.

Q. Would it be helpful for you to have such information received by persons outside the city and possibly beyond the county itself?—A. Yes; it would.

Q. Would you be willing to cooperate in the broadcast of regular talks; traffic and safety talks weekly, or at such periodic times as would be suited to you?—A. I would be glad to, because I believe it would be helpful to the safety of the community.

Q. Has it been your experience in the past that if the facilities had been available your efforts would have been more quickly productive of results?—A. Yes; I think it would have been very helpful in the past.

Q. Do you have any special incidents in mind?—A. Well, do you expect me to enumerate?

Q. Such as for school children?—A. Safety, do you mean?

Q. Yes, safety for school children, or anything.—A. Well, we have our safety drive put on practically annually, and in those safety drives we arrange to talk to the pupils in the schools, both public and parochial; and a number of speakers are put on those programs; whereas, if we had the privilege of the use of a broadcasting station we could and would get it to thousands of people more quickly and effectively, I think.

Q. And you desire to use these facilities for that purpose among others?—A. I would be glad to, if given the privilege.

Q. I believe that is all.

Cross-examination by Mr. GILLOON:

Q. Chief, you are familiar with the fact that there is at the present time broadcasting facilities in the city of Dubuque through the local station WKBB?—A. Certainly.

Q. You are familiar with that?—A. Yes.

259 Q. We have facilities at the present time, have we not, of broadcasting the material you have mentioned here in regard to the safety drives?—A. They have never refused to broadcast in case of an emergency.

Q. Or in any other case, have they, of an emergency? They have never refused to cooperate with your Department or the management of the city of Dubuque in putting on safety drives have they—making their facilities available to the speakers?—A. Well, I don't know if there was ever a request made upon them. No doubt but they would have offered their facilities on other occasions.

Q. Have you ever requested the facilities of the station for yourself?—A. No; I have not.

Q. Have you ever spoken over the station?—A. No; I haven't.

Q. Have you ever been denied the right to?—A. No; I have not.

Q. Have you ever listened to the station WKBB; 1500 kilocycles on the dial?—A. Quite frequently.

Q. And at what hours of the day have you listened?—A. Oh, I have listened quite frequently to them on the noon hour.

Q. Yes; it is customary for you to get their broadcast on the noon hour?—A. I have listened to them frequently; yes.

Q. And the reception is all right and always good?—A. Oh yes; yes.

Q. Do you know whether or not the station WKBB cooperates with the Police Department of the city of Dubuque, broadcasting notices and requests from that station?—A. They have done that in the past.

Q. They make inquiries at the station, do they not, if you have something to broadcast?—A. They have done that frequently.

Q. And you have heard the announcer broadcasting matters pertaining to the Police Department of the city?—A. Yes; they have.

Q. Crimes that have been committed and notices with regard to different things?—A. Yes.

Q. And that service is rendered to the Police Department, and very willingly, is it not?—A. Certainly. They have never refused to cooperate in any way.

260 Q. In connection with the operation of the business of the city of Dubuque and the Police Department you compile each month an accident report, do you not?—A. We do.

Q. And that accident report is broadcast by the local station WKBB, is it not?—A. Well, as to that I wouldn't say, Frank. They may have broadcast it at times. I don't believe they broadcast it regularly, but it is available to them if they want to broadcast it.

Q. Well, it is available, and what you mean is that you haven't heard it?—A. Well, what I say is they may have, but they haven't broadcast it regularly; but they may have broadcast it so far as I have heard it.

Q. Do you know whether or not they make daily requests at the station for information in regard to the happenings going on in the Department that might be of interest to the public?—A. Well, they did for quite a while. I don't think they make those requests regularly now.

Q. Well, you are not on the Desk, are you?—A. Well, I am in a position to know. They used to have one of the boys come up there nearly every day and get those things, but I don't think he has been doing that lately.

Q. Well, you don't know. I mean you are not on the Desk?—A. No; but just from being around. I haven't seen him there and I don't think they have been making the requests, probably as often as they used to, although they make inquiries from time to time.

Q. They might make those inquiries by telephone and you not know it?—A. Oh, yes.

Q. The Desk Sergeant, his office is in a different room than your office?—A. Well, before I answer that I would like to take a little time off to do that.

Mr. GILLOON. Well I object to that; it would be clearly hearsay.

A. Well, as far as that end is concerned, I can get it from the Sergeant who is on duty during the day continuously; but I think I cover the territory when I say they cooperate with us at all times and they have been broadcasting the information from the station quite regularly; and I say now I haven't seen them around there as frequently as I did before.

Q. Well, that is what you mean; they haven't been around as frequently as they had, but whether they received the in-
261 formation from someone else, you would not be in a position personally to know. What you mean to say is they haven't requested you for information; is that it?—A. Not just recently, but I think I covered the situation when I said they have at all times cooperated; at all times when we had anything they always did that willingly.

Q. They always did that willingly?—A. Yes.

Q. Now Chief, I will ask you to state whether or not in the State of Iowa, through the Department of Investigation main-

tained through the Attorney General's Office, that there are several broadcasting stations handling police matters?—A. Yes; there are.

Q. Over the state of Iowa?—A. Yes; there are.

Q. And crimes that are committed in the State of Iowa are reported to that station and relayed to the various police departments all over the state, are they not?—A. That is correct.

Q. And you have and maintain in the Police Department of the city of Dubuque, Iowa, a receiving set that takes the messages from that station so maintained?—A. Yes, sir.

Q. And if a crime is committed in the city of Dubuque of which you have knowledge and you have not already apprehended the suspect it is your duty, in cooperation with the State, to inform the Department of Investigation so that it may be relayed all over the State to the different police departments? That is true isn't it?—A. Yes.

Q. And that service so far as policing the State of Iowa, is maintained regularly?—A. That is correct.

Q. Now you said that you were familiar with the plans of the Telegraph Herald to establish a station here. Now what radius were you informed that that station would serve from the city of Dubuque? What I mean by that is, miles in all directions from the city.—A. From 70 to 75 miles.

Q. How many?—A. Possibly 75 miles.

Q. Did they tell you that?

Mr. LOVETT. I think it was 40 to 50.

Q. Well, I am asking him for his knowledge now. Who informed you?—A. Some of the members of the Telegraph Herald.

Q. Who was that?—A. Mr. Arndt I talked to.

Q. When did he do that?—A. Some time ago.

Q. How long ago?—A. I don't recall the date exactly of the occasion; I didn't make a note of it.

262 Q. Well, was it a week ago?—A. It was a couple weeks ago. I understood that it wouldn't cover a territory any further, and maybe not that far.

Q. Well, now, what did you understand about that?—A. Probably 50 to 75 miles; I can't get that exact, I may be mistaken.

Q. Well, would the distance have anything to do with your use of it?—A. Well, it would. Of course, the further the distance, possibly the more value it would be at that particular time, because any station—because this would be picked up by stations other than those that are set upon the wave for our State station, Frank. The only use we figured was—WKBB, information sent out by them is picked up by the ordinary receiving set; whereas the State stuff is sent out for the purpose of being

picked up by the police set and the Sheriff's set on that particular wave all of the time; and consequently the information given out by WKBB or any other station would be picked up by people other than possibly just the receiving sets and that possibly wouldn't get this because it wouldn't be on the same frequency.

Q. Yes, and of course, that would be limited to the reception area?—A. Yes.

Q. And in those instances that would apply only to information which you would desire to broadcast for the apprehension of a fleeing criminal?—A. Yes.

Q. That is what you had reference to?—A. Yes; that is the point we had in mind; naturally.

Q. With reference to the safety talks; that principally applies to the city of Dubuque area, your safety drives and talks; that applies principally to the City of Dubuque, that you are interested in?—A. Oh yes; yes.

Q. And do you know whether or not all of our schools here in the city, both parochial and public, grades and high schools and colleges, have receiving sets in their classrooms so that safety talk would be received by the school children with the same force and effect as of speakers going into the schools and colleges?—A. Well, I am not familiar with that. My intention of mentioning any safety talk over the radio station——

Q. It would be meant to reach people outside the schools?—A. Yes; and the students as well.

263 Q. That had access to radios?—A. Yes; and of course, the greater number of families have receiving sets of some kind that we could reach more people in that way; but so far as the pupils, I don't know how many rooms are equipped.

Q. Well, if the rooms are equipped with radio receiving sets they could all be reached as well as the home, through WKBB facilities which we have now, could they not?—A. Yes.

Q. That is true, isn't it?—A. Yes.

Q. Now if the application of the Telegraph-Herald for the station which it is applying for is granted and the station established here, would you also use the facilities of the present station WKBB after that time?—A. I don't know why we shouldn't.

Q. You wouldn't differentiate between the two, would you Chief?—A. Well, I don't see why we should.

Q. That is all.—A. If you have got a good grocery store on one corner and another on the other, there is no need of condemning one or the other because of it. Of course, we would be glad to have the facilities.

Redirect examination by Mr. LOVETT:

Q. Would you state whether or not the facilities of any existing station have been freely offered to your Department and

plans suggest for their use by your Department?—A. What is that, sir?

Q. Read that. (Question read by Reporter.)—A. Well, they have always been willing to broadcast anything that we were anxious to have put on the air for us at such times that they were broadcasting. There might be a question between two different broadcasting stations; one may have 24-hour service and one may have less; and of course if you have got two groups that you can draw on, that is better than one. There is no question about that. It would be a question of what the hours would be that their station would be available.

Q. But the point I was trying to bring out was, whether any special effort had been made to have you use the facili-
264 ties; any offer or plans made for the use of the facilities?—A. No; I wouldn't say that just in that way; but they have always been willing.

Q. Whenever you wanted to use it?—A. Yes; and I have never been refused it on any request that was made.

Q. That is all.

Recross-examination by Mr. GILLOON:

Q. You and the Police Department determine for yourselves the matters in which you want to employ in apprehending or attempting to apprehend criminals. You control the method of doing that? That is in your charge?—A. Yes; sure.

Q. You would not welcome the representatives of a radio station coming in and telling you how to run your Department, would you?—A. Well, I don't know as either of them would try to do that. They couldn't expect to be successful in that.

Q. No; and you wouldn't expect them to, would you?—A. No; I guess that won't happen.

Q. That is all.

J. W. GIELLIS.

Mr. BEN H. WALKER, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your name, your residence, and your occupation, please?—A. Ben H. Walker. The residence is Lancaster, Wisconsin. My occupation is County Agricultural Agent of Grant County, Wisconsin.

Q. Mr. Walker, will you state whether or not you are generally familiar with the plans of the Telegraph-Herald to establish a radio station to serve Dubuque and nearby counties, including

Grant County?—A. Do you want me to state whether I am familiar?

Q. Yes.—A. Yes, sir; I am.

265 Q. Will you state what the attitude of the Telegraph Herald has been and is now toward agricultural problems in their news columns?—A. Well, their attitude in the past has been to give every cooperation they could as a newspaper with respect to items of news value or educational value.

Q. If their plans be successful and they be permitted to establish a station here, and their facilities are freely offered to agricultural agents, to what extent will you be willing to cooperate with the station, using topics of agricultural interest?—A. Well, first; I can see a lot of possibilities of education in through the extension of radio facilities; and so far as my county is concerned I am satisfied in my own mind that a lot of programs, both of interest and value to our people, could be developed and adapted to radio procedure that would be of tremendous value to us.

Q. What, if any, radio programs are received in your area now of interest to farmers?—A. You are asking the question from the standpoint of effective educational value to farmers?

Q. Yes, and generally. Generally speaking what type of radio programs are received of that educational nature?—A. Well, we are getting very little that persuades the farmer that he may want to do something about a problem that he may have. In other words, so-called farm programs that may reach our people are not adapted to effective local educational value as applied to our local problems.

Q. What is the special agricultural activity engaged in in your county?—A. Do you mean the activity of the agricultural line?

Q. Yes.—A. Well, that is livestock, and very productive of beef cattle and some sheep and a lot of poultry. Grant County is the largest hog producing county in the State of Wisconsin. Grant County produces about seven million pounds of butter a year, which is the second highest butter producing county in the State; and our county produces about seven million pounds of cheese, which is a long ways from being the top in the State, but that is a lot of cheese.

Q. Do I understand that the programs that are now being received are general in application rather than localized
266 to meet your particular needs?—A. That is correct. To bring that out a little bit more clearly I could suggest, oh, one or two or three problems that are important from an economic and social standpoint to our people that aren't touched at all on the general broadcast stations: for example, our county, along

with several, in fact, most of these counties in this area have been for a number of years in what we call a white grub area.

Mr. GILLOON. Pardon me; what was that?

A. A white grub area; and they do a tremendous damage. They are doing tremendous damage this year to our corn. There are many sections of our country reached by general stations at which they know nothing at all about white grub because they don't have it; and Mr. Graber of the Agricultural College of Wisconsin has been working for a number of years; beginning a course in an experimental way, but now in a demonstration way, of ways and means of—well, I have used the term of "outwitting the white grub," to the end that it doesn't do as much damage as it otherwise would. Well, now, we could use a radio station that covers our county to a considerable advantage in making our people thoroughly acquainted with the life cycle and the nature of the white grub, and with preventive measures for controlling white grub injury crops. I could suggest other problems, but that is an illustration of how a station in which the program is designed to discuss a particular problem peculiar to farmers in a given area, could be used to very good advantage.

Q. It has been suggested here, this morning, that these proposed facilities would be available for weekly broadcasts to each of the six counties which the proposed station will be expected to serve on the whole or in a large part. Would you be willing to cooperate on such a schedule, or would you consider such a schedule would be helpful to further your efforts in your department?—A. You are suggesting a weekly broadcast, and if I may assume, you mean also an adequate time of day?

Q. Yes, to be determined.—A. Yes, we could use the facilities to very much advantage.

Q. Would there be other occasions when you would utilize the facilities of the station?—A. If you are asking the question
267 from the standpoint of occasions in which it would be advisable to pick up the program from where it is put on and put it over the station, yes, it would be. It would be considerable.

Q. Can you illustrate?—A. Our farmers, until the drought was at its height this summer, were very much interested in the corn-husking contest this fall. Right now I don't know if we will go through with it. I think we will. That type of event in the county lends itself very well to broadcasting, with a great deal of interest to the people. We are having at Platteville on the second and third of October, for example, a draft horse show. It is an educational program, and an occasion of that kind would lend itself to some broadcast.

Q. Would you be interested in making emergency announcements over the air?—A. Yes.

Q. To the farmers?—A. Yes; there would be. I can think of one that I would have liked to have had last week. We didn't get any grasshopper injury until about three weeks ago. That is, severe grasshopper injury, and by telephone I arranged with Mr. Chambers, the State Entomologist, to get four barrels of sodium arsenite, poison to use in making poison bait, and I could have used radio facilities very nicely to have hurried up the information to farmers in my county that we had it available, for example, one barrel at the C. C. C. Camp, at Bloomington, and Lancaster, and Platteville; and I missed the newspapers by the time I got it in the county and I had no way of announcing it to the farmers that it was available and what they should bring in the way of containers to take it out, and the like.

Q. Are there any radio facilities available to you now for which you would desire to use these facilities?—A. No.

Q. That is all.

Cross-examination by Mr. GILLOON:

Q. Do you know the distance from Dubuque to Lancaster?—A. Yes, sir; thirty miles.

Q. Where is Lancaster located in the County of Grant?—A. It is very close to the geographical center.

Q. How far is it from Lancaster to the northerly line of the county?—A. Straight north to Boscobel it is 54 miles,
268 from Dubuque to Boscobel; in other words, Boscobel is 24 miles beyond Lancaster. The farthest tip of Grant County from here is 66 miles. That is by road now; what it would be straight across I don't know. That is at the northeast corner of the county, the village of Muscoda.

Q. How many miles is it from Dubuque to the easterly border of the County of Grant County, Wisconsin?—A. Well, that would be twelve to fourteen miles.

Q. Where?—A. East. Right straight east.

Q. Is the county wider in the north than it is at the south portion?—A. Because of the river; the county bulges out on the Mississippi and comes down on the west side; you see, we are bordered on the north at Muscoda by Richland County and at Boscobel by Crawford, and it borders on the Mississippi which makes a very wide bend and then it cuts to the east very much to where the south end of the county is only two townships wide.

Q. What is the distance from Lancaster to Madison, Wisconsin?—A. About eighty-three miles; right close to there.

Q. 83?—A. Yes.

Q. By road?—A. Yes.

Q. What is it by air line?—A. Oh, I wouldn't know the exact distance.

Q. It would be a shorter distance, would it not?—A. Yes; it would be; but not appreciably shorter; by going to Madison by going twelve miles north to Fennimore and then cut straight east on Highway No. 18, Federal Highway.

Q. Where is the Wisconsin Agricultural College?—A. At Madison, Wisconsin.

Q. And the Agricultural College makes use of WIBA at Madison?—A. Yes, sir.

Q. And does Professor Graber use the facilities of the station for talks?—A. Well, he does sometimes.

Q. Do others?—A. Yes.

Q. On farm problems?—A. Yes; that is correct.

Q. How is the reception at Lancaster of WIBA?—A. Sometimes it is good and sometimes it is not good.

Q. Do you know what power that station has?—A. No; I do not.

Q. Do you have a radio?—A. Yes, sir.

Q. In your office?—A. No; not in the office.

269 Q. At your home?—A. Yes.

Q. Is that the radio you attempt to listen to the programs of WIBA through your own radio?—A. Yes.

Q. And you say the reception is sometimes good and sometimes not so clear?—A. That is correct.

Q. And during the times that it is not so clear is that during stormy or inclement weather?—A. Well, not always.

Q. The reception differs in similar weather?—A. Yes, it does.

Q. What kind of a set have you?—A. Gosh, I can't tell you; it has been three years since I bought it.

Q. Three years since you bought it?—A. Yes; uh-huh.

Q. You also get at Lancaster Station WTMJ, Milwaukee?—A. Yes.

Q. Do you recall whether that is on a frequency of 620 kilowatts?—A. I don't know.

Q. Do you recall where you get it on the dial?—A. Well—

Q. Well, that seems to be the——A. In my use of the radio at home I don't pay very much attention; they pay more attention to what spot to pick it up than I do.

Q. Do you make much use of the radio yourself?—A. Well, certain types of programs. Certain types of programs; particularly of an educational nature; sometimes a ball game; a prize-fight of some considerable national importance if I am where I can listen to one. If I am advised in advance of programs that I think I might be interested in I try if I can to tune in on them.

Q Uh-huh. Now in disseminating information from your office to the farmers of Grant County, what facilities do you employ at the present time?—A. The mail.

Q. The mail?—A. Yes.

Q. And is that by the use of a postcard?—A. No, that is almost entirely by the Government frank.

Q. The government Frank?—A. Yes, sir.

Q. And do you use a mimeograph?—A. Yes, sir.

Q. And is that the way you call your special meetings?—A. Yes, sir; committee meetings.

Q. The greatest distance; the greatest drive to Lancaster would be about approximately thirty miles from the farthest point in the county?—A. About thirty-six miles from two different points, the southeast corner and northwest.

270 Q. You accommodate your meetings to certain sections in school houses; you have township meetings?—A. Yes.

Q. And you call those through the mail?—A. That is correct.

Q. And education the farmer to the use of this grasshopper poison did you employ the special local township meeting?—A. No, we did not.

Q. How did you go about it?—A. We were so limited in the quantity of poison we had from the State, it wasn't necessary to have these meetings.

Q. You took it up with certain individuals in border sections?—A. Yes; and it wasn't very long until it got to be pretty well known.

Q. Yes; it spreads, and what poison bait you had available, or the poison you had available for making the bait; it is mixed with wet bran?—A. We used sawdust.

Q. Is that supplied free of charge to the farmers?—A. Yes, sir.

Q. Through the United States Agricultural Department?—A. I couldn't say to be sure whether the U. S. D. A. participated with Mr. Chambers in that or not.

Q. But the United States Agriculture Department has been making quite an extensive study and survey of means of annihilating or eliminating this pest, has it not?—A. So far as I know, it has.

Q. Well, you keep in touch with those things as an Agricultural Agent; that is one of your problems, is it not?—A. That is true; but it is impossible to keep in detailed touch with everything.

Q. Well, I mean generally?—A. Yes.

Q. They have been formulating some means of outwitting the grasshopper?—A. That is true.

Q. And its inroads have been more extensive in the West than in this section; that is true, isn't it?—A. Yes. My information

on that mainly comes from newspaper reports, rather than direct information from the official report of the U. S. D. A.

Q. Have you ever heard agricultural information broadcast over WKBB, or from WKBB?—A. Here?

Q. Yes.—A. Yes, I have; very little. I have myself used WKBB some; but not lately.

271 Q. The facilities of the station have been offered to you?—A. Not lately; no, sir.

Q. Well, they have never been refused you, have they?—A. Yes, that is true; they have never been refused.

Q. And you haven't requested the use of those lately; that is what you mean?—A. No; that is correct. That is correct.

Q. But you did use the station heretofore?—A. Yes, sir. The occasion for discontinuing the use of it was the failure to get a suitable time for our purpose. A couple of County Agents around here were using it for several months and we couldn't agree on suitable time, so the program was just dropped.

Q. You mean one agent wanted one time and another wanted another?—A. Yes, sir.

Q. And the agents couldn't agree on the suitable time?—A. No; the station. We couldn't get a suitable time with the station.

Q. What time did you want?—A. Between five and six o'clock.

Q. In the evening?—A. In the evening; yes, sir.

Q. And you thought that that was the preferable time?—A. No. No, that was a very poor time for our program.

Q. No, you mi-anderstood my question. I asked you what hour the agents preferred?—A. Well, I can't speak for all of them; I can only speak for myself.

Q. Well, didn't you have any meeting, or "get-together" your six agents in this territory?—A. Well, he had a committee representing the agents.

Q. Were you on the committee?—A. Yes, sir.

Q. Well, what time did you determine upon as a committee?—A. We would have preferred sometime between twelve and one o'clock or as a second preference, somewhere between six or eight o'clock in the evening.

Q. Yes?—A. But at that time a time on the air between six and eight in the evening would have been out of the question, because the station couldn't operate. I don't understand anything technically about a station getting out, but I presume it didn't have enough power; but as we approached six o'clock in the evening, other stations cutting in, and they just couldn't
272 get out and deliver successfully. We had some trouble between five and six o'clock in the evening.

Q. But do you remember what hour of the day it was offered to you, or what time?—A. Well, the only time it was ever offered to us was between five and six o'clock in the evening.

Q. Do you know that Mr. Kerrigan, the Agent for Dubuque County, broadcasts every Monda at noon?—A. No. Do you mean that he is now?

Q. Yes.—A. I didn't know that.

Q. How long is it since you requested any time on WKBB?—A. Oh, it has been approximately a year.

Q. A year?—A. Yes.

Q. And the reason for not taking the later hour, say from five to eight, or in that territory, was due to inadequacy of power at the station to serve the radio audience that you desired to reach?—A. Well, not entirely that. Between five and six is a bad hour regardless of the power, for farm people.

Q. For farm people, to get them as listeners?—A. Yes; that is correct.

Q. And the later hour, from six to eight, in that territory, that was not acceptable because of inadequacy of power?—A. That is correct.

Q. And how about the noon-day period?—A. To the best of my knowledge we were never able to get the station interested in a noon hour. I was on the committee with Mr. Kerrigan and Mr. Brunnemeyer from the adjoining county in Illinois, and we usually left it to Mr. Kerrigan to make the contact with the station because he was conveniently located here where he could. And after we quit using the facilities he never reported back to any of us that he had been able to make a satisfactory arrangement with them for a time that would be suitable for our type of work.

Q. You didn't contact any representative of the station personally on the subject?—A. No; no, sir.

Q. Now, did I ask you if you ever requested the facilities of WIBA at Madison to serve your purposes?—A. No; no I haven't.

Q. That does serve that whole southwestern section of Wisconsin, does it not?—A. It gets in there.

273 Q. Including Grant County?—A. Yes, it gets down to Grant County. I have never had any way of testing how many radios and under all types of conditions, how the reception would go.

Q. No, you don't know what the general reception would be.—A. No. From our standpoint and from the standpoint of using WIBA, it is too far for us to go.

Q. Have you ever taken up the white grub problem you have, you say, in your county, with the Agricultural College at Madison?—A. Yes, sir.

Q. And is your county the only county that the white grub exists in?—A. No, no.

Q. Is that pest quite general over the same section that is subject to the same climactic conditions and ground conditions and crop conditions?—A. I can't say as to that, except that there has been an area around Dubuque here for—oh, 15 or 20 years in which there has been more grub injury than sections outside.

Q. They usually work in the sod-ground?—A. Yes. The June beetle usually lays its eggs in the grass types of plants; bluegrass, or small-grain.

Q. Do they law the eggs in corn?—A. Well, they don't lay the eggs in the corn: but if you plant the corn in the grass ground that eggs were laid in last year, they do more damage.

Q. They work more extensively in the dry weather?—A. I wouldn't say they work more extensively, but they do more damage in the dry weather.

Q. Yes; they do more damage in the dry weather?—A. Yes: correct.

Q. What is there to do about it?

Mr. LOVETT. Mr. Gilloon, may I ask the materiality of all this questioning?

Mr. GILLOON: Yes. I want to know what information he can give the farmers.

Mr. LOVETT. You are going into needless details. He has gone into that and that the radio facilities now are inadequate, and I don't see how any details with reference to the grub or the Agricultural College of Wisconsin has to do with it.

Q. Well, answer the question.

Mr. LOVETT. Well, he ought to have the lunch period.

274 Mr. GILLOON. Well, you kept us here in the lunch period and inflicted this man on us. Read the question.

(Q. read by Reporter) "Q. What is there to do about it?"

A. Well, the pasture lands; Mr. Graber over a period of years has been able to demonstrate beyond any reasonable doubt, that the disking of grub damaged pastures early in the spring, and reseeding them with legume seed such as alfalfa, sweet clover, and red clover, is an effective way of repairing the damage done by the grubs to the pasture, and that type of land if left in pasture will gradually work into bluegrass with some sprinkling of alfalfa and clover carrying over. The secret of that procedure is the fact that June beetles do not lay many eggs in legume sods. I could give you a very striking illustration of that if you want it.

Q. Oh, I don't want quite so much detail. Isn't this same information given out by Mr. Graber?—A. Mr. Graber don't give it out.

Q. Over the radio in his talks?—A. He don't give it out covering all of our farmers in the county, and he wouldn't have the facilities. I will put it this way. It is my opinion that he wouldn't have the facilities at the Madison station to give enough repeated attention to it to persuade a fairly large percentage of the farmers to want to do something about it.

Q. I think that is all.

Mr. WALL. No cross examination.

Redirect examination by Mr. LOVETT:

Q. Just two or three questions on Re-Direct Examination. You referred to the fact that you listened to educational programs, in answer to Mr. Gilloon's questions. Do you include in that agricultural programs?—A. Not to any great extent.

Q. As a matter of fact, the type of programs you listen to over the air; do you listen to agricultural programs; such as are available?—A. Not to any great extent; and may I give the reason for that?

Q. Yes.—A. Well, I am wrapped up in educational problems from early morning until night six days a week, and
275 sometimes on Sunday; and I like to break off on something else.

Mr. GILLOON. During your radio time?—A. Yes.

Q. But you know of your own knowledge that the facts stated by you on Direct Examination as to the availability of broadcast of things of that nature in your area?—A. I am thinking of the use of radio in education in agriculture; from the standpoint of reaching this farmer directly on a problem that is of concern to him, and that we may by that and other means persuade him to do something about it. Now, we may do this, and this, and this; but in my work my job isn't finished until this farmer does something about this particular thing.

Q. And you know of your own knowledge that radio facilities for that purpose are not now available?—A. That is correct.

Recross-examination by Mr. GILLOON:

Q. How do you know that?—A. Well, none of it is being done.

Q. Do you listen to the agricultural programs over WKBB that are broadcast daily?—A. No, sir.

Q. And you haven't tuned in to them?—A. No sir.

Q. And if they are broadcast, you know nothing of it?—A. Yes.

Mr. LOVETT. Do you hear WKBB in your county?—A. Just in the daytime at times.

Mr. GILLOON. Now, just a moment. We move that answer be stricken out as an incompetent conclusion of the witness and hearsay.—A. What is the question?

Redirect examination by Mr. LOVETT:

Q. Do you hear WKBB in Grant County?—A. In Grant County?

Q. Yes.—A. Yes.

Q. In all parts of Grant County?—A. No.

276 Q. What part can't hear it?—A. In the north, beginning with Fennimore, north to Boscobel, and in the northeast section.

Q. Is that at nighttime, or in the daytime?—A. Well, at nighttime you can't hear them clearly even as far, our station, at Lancaster.

Q. Were the facilities of WIBA at Madison ever offered to you?—A. Not to put on a piece of educational work that was prepared and directed toward a problem in Grant County. I have talked over WIBA on two or three occasions at invitation by the station management on subjects that were of general interest to farmers in the state.

Q. I believe that is all.

Recross-examination by Mr. GILLOON:

Q. When did you tune in on WKBB at Fennimore?—A. I haven't tuned in on them at Fennimore.

Q. You never listened for them at Fennimore?—A. No, I haven't.

Q. Have you ever listened for them at Boscobel?—A. I have a wide acquaintance——

Q. No, no. You answer my question.—A. All right. No sir.

Q. How frequently have you tuned in on WKBB at Lancaster?—A. My family tunes in on them.

Q. No.—A. You are talking to me, personally?

Q. Yes.—A. Personally I don't pay any attention to WKBB.

Q. You don't?—A. No sir.

Q. And whether your radio is tuned in on WKBB when you are home, you don't know of your own knowledge?—A. My information on the reception of WKBB comes from the attempts of my family to be served.

Q. Well, how do you know that?—A. Well, a man would know if his wife and two sons, one 16 and one 17, and a daughter——

Q. Don't argue now. How do you know it if you didn't operate the instrument yourself, you said?—A. I know it by being in the room where members of my family have tried to pick up the station.

277 Q. From hearsay?—A. No; not from hearsay.

Q. Did you see the dial?—A. Certainly.

Mr. LOVETT. Did you hear the announcement of the Station at the time?

Mr. GILLOON. Just a minute; we better let the witness testify, don't you think?

Mr. LOVETT. I want to help you.

Mr. GILLOON. Well, I think I will manage that part all right.

Q. How did you know it——A. Why——

Q. From your own knowledge?—A. The only way that one could know it; by their making an attempt to get the station and not get satisfactory reception.

Q. Did you get the station?—A. Occasionally, to tell what station it is.

Q. Do you know what frequency it is on?—A. I don't pay any attention to the figures on the dial.

Q. Well, you have never tried, yourself, by the operation of the instrument, to get WKBB?—A. Yes; I have.

Q. How many times?—A. Not very much, that is correct; if you are talking to me, personally.

Q. Yes; I am. You are the witness.—A. Well, if I said "never," that wouldn't be true.

Q. But very few times in the last three years?—A. That is correct.

Redirect examination by Mr. LOVETT:

Q. How successful were you when you did try?—A. Not very successful.

Q. It wasn't satisfactory reception, is that it?—A. Yes.

Q. That is the reason you didn't try other times?

Mr. GILLOON. We object to the question as leading.

A. Yes.

Q. Why didn't you try other times?—A. Is that your question?

Q. Yes.—A. Well, if you want the question answered, I will answer it. Both from the standpoint of reception and the standpoint of the nature of the material; I wasn't interested.

278 Recross-examination by Mr. GILLOON:

Q. How did you know what the material was? Where did you see the program?—A. Well, I have broadcast quite a number of times over WKBB.

Q. You have broadcast?—A. I have broadcast quite a number of times over WKBB.

Q. What did you broadcast?—A. Agricultural material.

Q. Agricultural material?—A. That is correct.

Q. And you thought from the nature of your material that the program would not be interesting, was that it?—A. If our people could have picked up the program I think it would; yes, sir.

Q. I think that is all.

1:10 o'clock P. M. Meeting adjourned to 1:45 P. M.

BEN H. WALKER.
Witness.

Mr. FRANK E. RALPH, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. State your name, residence and occupation.—A. Frank E. Ralph, Lancaster, Superintendent of County schools.

Q. Mr. Ralph, are you familiar in general with the plans of the Telegraph Herald to establish a radio station in Dubuque to serve Dubuque and nearby counties?—A. Well, I have talked over the matter with your representative of the Telegraph Herald and I don't know that I am very familiar, but I know a little something of it.

Q. In general?—A. Yes.

Q. Will you state, in view of your knowledge, what recognition and what cooperation the Telegraph Herald has extended to your County in connection with its school problems?—A. Well, of course, they have been very nice about carrying the news of the schools around this vicinity and they have put on several contests in which many of our schools have taken part.

279 Q. Mr. Ralph, if this proposed station be established, to what, if any, extent will you be willing and desirous of cooperating with them in the preparation and broadcasting of an educational program?—A. Well, we could use this station, I think, to advantage. For instance, in our special meetings. We put on a contest every year in writing, arithmetic, and spelling, and the final contest is held at Lancaster; and I think we could use it probably in that connection. We have also in connection with our schools a County Nurse, and I am sure that she would be willing to go on and give a program once in a while on health problems.

Mr. GILLOON. I move that the last answer of the witness in regard to what the County Nurse would be willing to do be stricken out as predicated on hearsay.

A. No; it isn't on hearsay. I am on the committee that hire her and control her; so I think we can work her in on that. I happen to be a member of the Health Committee of the County.

Mr. GILLOON. You can continue, then.

A. Well now, we are—have been trying for the past two years to put on a good strong program in reading, especially in lower grade reading, and I think we could arrange a program or two

to attempt, at least, to have the parents a little better acquainted with the work we are doing in that line. Then we are attempting also to keep out under-age children; children under six years of age out of the schools. There would be a good chance to get in contact with the parents and acquaint them with the real disadvantages to the children in sending them to school before they should come, before they are six.

Q. In other words, you have difficulty in getting over to the parents the real place of education in the community?—A. Well, you see, the County Agent has a decided advantage over the superintendents in that respect. He is telling the farmers how they can make money; how they can improve their crop production and milk production, and have better hogs; and all we can do is tell them how they can go out and spend their money; and we are handicapped in getting the parents interested; especially if we are going to do something new on which we might want to lay emphasis.

280 Q. You say, you feel if the Telegraph Herald would have a weekly program, would that be of any advantage to you?—A. Well, of course, that would depend on when they were broadcast.

Q. Assuming it would be at a time agreeable to you?—A. Yes; I think we could use it to advantage.

Q. And you would cooperate in furtherance of such a program?—A. I would be glad to work with the Telegraph Herald on parent programs; and we have fifteen high schools in the county and I think twelve of those principals would be glad to cooperate.

Q. And do you have any talent in the school system?—A. Yes; we have a band in most of the high schools under special direction, and in many of the schools they have orchestras, and then they do have some vocal organizations and do singing. Lancaster has quite a nice boys and girls' glee club.

Q. Would they be available on broadcast occasionally?—A. They would be glad to help. Then there is another point I would like to mention in regard to the safety program. We have a safety program; the whole State is organized. I think every county in the state is organized, trying to carry out a safety program, and the schools have been asked to cooperate with them, and I don't see why we couldn't use these facilities to work along that line also.

Q. Would there be times when an emergency came up that you would like to make announcements?—A. Well, it would be very nice to have that privilege, last winter, of broadcasting to the parents when we were frozen out for four or five weeks. Many of the schools were frozen out two or three weeks.

Q. And how did you get the knowledge to the parents?—A. Through the school boards. Of course the School Boards have the authority to close or open.

Q. That information is transmitted by telephone and newspaper?—A. Yes.

Q. Are any radio facilities now available to you for the purpose which you have suggested?—A. No; not that I know of.

Q. I believe that is all, Mr. Gilloon.

281 Cross-examination by Mr. GILLOON:

Q. Have you ever sought or requested the facilities of the local Station, WKBB?—A. At East Dubuque?

Q. Yes.—A. No.

Q. In any of your work?—A. I haven't. The fact of the matter is, I didn't know that they were doing that kind of work.

Q. You didn't know that the station was open to the public?—A. No; I didn't.

Q. If you did know, might you avail yourself of the opportunity?—A. What is that again?

Q. If you did know, might you avail yourself of the opportunity?—A. Yes; I think probably I should have.

Q. You may, now that you have that knowledge, employ that station to disseminate the knowledge that you have related here?—A. I suppose I could.

Q. This program of limiting public education in the schools to those above the age of six years; is that a propaganda program, or is it the policy of the state?—A. I don't know just what you mean by "propaganda program."

Q. Well, I mean, is it being urged by a group to sell it to the parent and have it adopted by the schools?—A. We are urged by the State to sell our educational proposition to the parents and try to get them more interested. Now, the fact of the matter is, many of the parents in the country today are interested, as I said a while ago, in raising good hogs and good cattle, than they are in schools.

Q. Yes; but to keep to this six-year proposition?—A. Oh, you mean the under-age?

Q. Yes. Under the school laws of the State of Wisconsin is the years which—or the age when children may commence going to the public schools, is that statutory?—A. It is. It is from four to twenty.

Q. From 4 to 20?—A. They start to draw State money when they are four years old.

Q. And they start in the kindergarten?—A. Yes.

Q. When they are four years old?—A. Yes.

Q. And what you mean is, when you disseminate propaganda, to say it would be favorable to keep the children out of the school, until they reach the age of six?—A. Well, only in the country schools; they have no kindergarten.

282 Q. Well then, this only applies to the country schools?—A. Well, it applies to the village schools too. Now we have only three schools in the county that have a regular kindergarten and they have no problem of under-age children; but in the other thirteen villages and cities and in the country we have that problem of under-age children, and it is a serious proposition.

Q. But the matter addresses itself to the Legislature?—A. Yes.

Q. To change the statute on that?—A. Yes.

Q. And it is state-wide?—A. Yes; but I don't see why we in Grant County can't get the parents educated, if we can, to keep the child home until he is of school age. The State Department is fighting that.

Q. It would be as convenient for you to use WKBB for that purpose as a station that might be owned and controlled by the Telegraph Herald?—A. Oh, I suppose so. Yes; I suppose so.

Q. And if you were to employ the facilities of a broadcasting station here at Dubuque to broadcast your writing contests and arithmetic contests and spelling contests, it would be necessary for you to have the facilities carried to Lancaster for that purpose by remote control, over a wire?—A. Yes.

Q. You have never taken that matter up with the local, WKBB?—A. I never have thought of it.

Q. You thought of that since you came here?—A. No; I never thought of it until this gentleman from the Telegraph Herald came up and interviewed me three or four weeks ago when he was up to Lancaster.

Q. Oh, yes. The weather reports are broadcast from stations at Madison, are they not, daily?—A. We get the weather reports. I don't get the Madison stations so much. I get the Chicago stations.

Q. And they give you the Wisconsin weather reports?—A. Yes.

Q. That is your personal experience?—A. Yes.

Q. Madison also broadcasts them?—A. I have trouble getting Madison. I don't know whether it is my radio or the station.

Q. How old is your radio?—A. Oh, it is old enough.

Q. How old?—A. Six years.

283 Q. What make?—A. A Majestic. I bought it when they were the highest.

Q. You frequently have it overhauled?—A. Yes.

Q. And keep it in good condition?

Mr. LOVETT. Ask him how many tubes it has.

Q. Well, that is your suggestion. How many tubes has it? Mr. Lovett suggests that I ask you that.—A. Well, I don't really know much about radios, but I believe it is an eight tube. I imagine it is; it cost enough to have fifty tubes, I know that.

Q. You have a little difficulty with it?—A. No; not a great deal.

Q. Oh, you mean the original cost?—A. Yes; but I had a little hard luck with it; the lightning got into it and I had some trouble with it the first year, but now it works fairly well.

Q. Now, the County nurse works through the Grant County Health Board?—A. Health Committee.

Q. Health Committee?—A. Yes.

Q. You are on the county committee?—A. I am a member of the county committee by virtue of my office; I am Secretary of the committee; the County Chairman and the County Judge and a lady member elected; a lady at present is serving.

Q. Now, you work through the local health departments of the different townships in the county?—A. I work with, do you mean?

Q. Yes.—A. Yes.

Q. I think that's all.

Mr. WALL. No examination.

Q. Just a minute. What hours do you understand this proposed station will operate?—A. Do you mean to serve the county, do you mean?

Q. Well, what hours would it operate?—A. Well, of course——

Q. Do you understand? Have you been apprised of the hours applied for?—A. Well, I don't know what hours they have applied for, but I know to serve the homes in the country the best hour according to my judgment, would be the noon hour.

Q. The noon hour?—A. Of course, that wouldn't, if we come to the place where we get radios in our schools. Until
284 we get radios in our schools that wouldn't do the children any good at all; the night hour would be better for them, the evening hour.

Q. Well, as Superintendent of the County Schools, how many schools to your knowledge have radio?—A. We haven't any.

Q. You have no radio at the present time?—A. No.

Q. So that you would want the children in the home at the time of the broadcast?—A. Well, I should think they should be there; some of the time at least; wouldn't you?

Q. Well, I am—— A. Asking me, eh?

Q. Yes; what your notion is on it.—A. Well, I would judge that they should be there for some of the broadcasts.

Q. Yes?—A. Now, for instance, if you are putting on a children's program that should be given when the children are in the home.

Q. And that should be sometime after four o'clock?—A. Yes.

Q. After the children reach home?—A. Yes; say after five.

Q. Now at what hour after five would you think would be preferable?—A. Well, I don't know that it would make so much difference if it was a children's program entirely. Sometimes parents enjoy those children's programs; fathers and mothers; and I would say between six and seven.

Q. After the chore hour?—A. Yes; probably about the time for the supper, or the evening meal.

Q. Yes, and that would be during the nine months of the school year?—A. Yes, sir. * (* * * short pause.) Well, are you all through with me now?

Q. Until you were approached by this representative of the Telegraph Herald a short time ago who interrogated you with reference to using a radio station that they had applied for, you had never seriously thought of the matter yourself, had you?—A. No; no I hadn't.

Q. That's all.—A. The fact of the matter is, I know very little about broadcasting. I have never been in a broadcasting station.

Q. That's all.

285 Redirect examination by Mr. LOVETT:

Q. If these facilities proposed by the Telegraph Herald be made available, would that result in the equipment of some of your schools with radio receiving sets?—A. Well, I couldn't say. I rather think it would, but I wouldn't say positively that it would. That would depend quite largely on what price radio sets would be installed. If they weren't exhorbitant in price there may be some put in; but that wouldn't happen all at one time. It would take some time to get that started.

Q. I believe you indicated that until today you hadn't heard of WKBB?—A. Well, I knew there was a broadcasting station at Dubuque, but I wouldn't say—I want to be honest—that I never got it. I never tried to get it; we are in the habit of getting the Chicago stations.

Q. Have the facilities of that station ever been offered you?—A. No.

Q. I believe you testified if the facilities were offered to you that you might make use of those to the same extent as that of the Telegraph Herald?—A. Well, I don't know anything about the East Dubuque station. How large a territory does it cover?

Q. Well, state whether or not that would depend upon which would more effectively cover your area?—A. You see, our terri-

tory, if you get over into the far northeast corner, it is about sixty miles from Dubuque, and I would want to employ the one that would more——

Q.—effectively do the work?—A. —effectively do the work, yes.

Q. That is all.

Recross-examination by Mr. GILLOON:

Q. Now, the installation of radio receiving sets in the schools would depend entirely upon the action of the local board of directors?—A. Absolutely; they run the schools.

Q. They run the schools?—A. Yes.

Mr. LOVETT. And you make the recommendations?

A. I make the recommendations; yes, sir.

286 Mr. LOVETT. That is all.

A. That is all then.

FRANK E. RALPH,
Witness.

Mr. F. L. BURNS, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. State your name, residence and occupation?—A. F. L. Burns; Galena, Illinois; County Superintendent of Jo Davies County Schools.

Q. Mr. Burns, you are familiar in a general way with the plans of the Telegraph Herald to establish a radio station in this area?—A. Well, I think in a general way I know what their program is.

Q. Can you state from your own knowledge what the attitude of the Telegraph Herald has been and is now toward the rural school system, particularly the one in which you are interested?—A. Well, they have always been in favor of a school program in general. Of course, I am over all the schools of the county, and not just the rural schools; and it has been a very good newspaper as far as we are concerned; and I think, as a local paper—we have our paper in Galena—I think as far as the local newspaper is concerned, I think the Telegraph Herald is the most widely read in Jo Daviess.

Q. Yet always giving adequate prominence to the problems confronting you?—A. Yes.

Q. Mr. Burns, if the Telegraph Herald be successful in its efforts to establish a station here, to what extent and in what way would you be desirous of using those facilities?—A. Well, not only myself, but other educators of the county, Superintend-

ents of Schools in the various towns I think could make very good use of the broadcasting station in all matters pertaining to education and publicity in regard to our State Teachers' program; especially in the coming year. We expect in the coming year,

287 we expect to have some very important legislation brought before the State Legislature, and it is very difficult for us to get in close touch with the rank and file of the people in the county. They are all interested in education, but they don't know what is going on, and I imagine if we could have a program of this kind we could maybe interest a good many more of them then we would through just sending out circular letters which some of them won't read when they get.

Q. Have any radio facilities been made available to you in the past for this purpose?—A. Not in my county.

Q. It has been suggested by the Telegraph Herald that weekly broadcasts be scheduled, one day each week devoted to each of the six counties which they propose to serve. Would you be interested in cooperating in that program?—A. I think we would be able to take part, and at certain times perhaps it would be quite valuable to us to have that opportunity.

Q. And you could make use of it on special occasions?—A. Yes, sir.

Q. You could use it for broadcasting graduation exercises?—A. Well, they aren't as important as other things. What do you mean? When you have a commencement program, to have it broadcast?

Q. Yes.—A. Oh, sure; that would be fine.

Q. Are any of your schools equipped with radio receiving sets at the present time?—A. Yes, some of them are; the city schools; not the rural schools.

Q. If these proposed facilities become available would that result in the greater use of those receiving sets and possibly the equipment of additional schools?—A. If there was an educational program they might take advantage of that. Some of the rural schools might; it is hard to say about that. I know they do in the city schools; they get that Damrosch program.

Mr. GILLOON. What is that?—A. Several schools get that Damrosch musical program.

Q. So you feel if these facilities become available they could be made more and more a part of the school routine?—A. Sure; they could aid in the general school program.

Q. That is all, Mr. Gilloon.

288 Cross-examination by Mr. GILLOON:

Q. Where does this Damrosch musical program come from?—A. Well, I don't know; is it New York? I think it originates in New York. I don't know much about that, only

I have been visiting schools and when I would go in there in a certain room they would have that program on; it is announced to them what hour it would come on and what the program would be for the week.

Q. Certain of your schools?—A. Some of the town schools get that program quite regularly.

Q. Have you ever listened to WKBB, the East Dubuque station?—A. Yes; uh-huh.

Q. I beg your pardon?—A. Yes, I have, several times: the lunch period when I am home at noon.

Q. The reception comes in all right?—A. Fairly well. That is about the only time I have ever listened in, when they have that news flash.

Q. Uh-huh. When was the plan with reference to the proposed station of the Telegraph Herald disclosed to you?—A. Well, a few weeks ago, I don't remember the exact date.

Q. By whom?—A. The gentleman sitting there.

Q. Mr. ARNDT? A. Well,—

Q. This is Mr. Arndt.—A. Yes.

Q. Prior to that time had you given any thought to employing broadcasting facilities for the purposes which you have enumerated? A. Well, I don't know that I had given it any special thought. We have a good many propositions coming up all of the time and we are very busy in the summertime until we don't think so much about those things until they are suggested to us.

Q. Well, I am just trying to get the fact, whether you thought of it before.—A. Not before I heard from Dubuque.

Q. In other words, in the past you haven't directed your attention to a public program such as you have suggested now?—A. Not over the radio.

Q. Well, I mean over the radio?—A. No. We have other—thought out other methods of getting our program before the people, but nobody had ever made us any offer of that kind, or had suggested it.

289 Q. You never consulted with anyone in connection with WKBB to see whether those facilities were available?—A. No, I never did; in fact I am not the chairman of our publicity committee in the county, and he may have done that; I am not sure.

Q. Well, of course, you don't know that he did?—A. No.

Q. Now, the Chairman of your Publicity Committee, who is he?—A. Mr. M. R. Stephans, Superintendent of Schools at Stockton.

Q. Stockton is outside of Jo Daviess?—A. No; it is in Jo Daviess County.

Q. Well, then; he is under you?—A. His school system is in my county, yes.

Q. But you are over it, are you?—A. But his is a little different: he is publicity chairman for the northwestern division of the Illinois State Teachers' Association, five counties—Jo Daviess, Stephenson, Winnebago, Carroll, and Boone Counties: in northwestern Illinois and we have quite an extensive program that we are going to present to the people this coming year; especially when the Legislature is in session, or before they meet; and he happens to be the publicity chairman of that division, and we had meetings discussing ways and means of getting our educational program before the people. Of course, I am concerned only with my own county and he is concerned with five counties.

Q. How far eastward from the river would the easterlymost point of these five northwestern counties extend?—A. In miles it would go to about ten miles east of Belvidere, which is about fifteen miles east of Rockford. There is a small county there, Boone County, a very small county with nine townships. Belvidere is the county seat.

Q. Do you know the approximate mileage from Dubuque To Rockford?—A. Yes; 95 miles—no; let's see. 78 plus—how far is it from here to Galena, sixteen? Seventy-eight from Galena to Rockford.

Q. Approximately ninety miles?—A. Yes, but that is by Route 20; but it winds around a little. It wouldn't be that far as the crow flies, because we go south and wind around these hills here along the river.

Q. Going back to this Superintendent; of what town was that?—A. Stockton.

290 Q. He is the Superintendent of the city or town schools? A. Yes.

Q. That is outside the limits—— A. Well, it takes in the village of Stockton. Quite a bit of territory outside our school districts overlap in a good many cases.

Q. What I am coming to is this: You say you are the Superintendent of the rural and town schools; all the grade and high schools?—A. Yes, uh-huh.

Q. Of Jo Daviess County?—A. Yes.

Q. What—do you control the policy in the schools under these other superintendents?—A. We, in Illinois, we—a city over a certain population, they have a city superintendent and we don't have much to say about that, only the certification of certificates, but we delegate it.

Q. Well, if you don't have it, you can't delegate it.—A. Well, we have it, but we do what a superintendent would with a city

Superintendent here; he wouldn't really try to do all of that, but we really have the authority.

Q. Over the—— A. Elementary schools of the county, yes.

Q. But the policy of those schools is largely determined by the local superintendent?—A. Well, yes; supervision locally, although we must visit them each year and we must inspect the buildings and see if they meet the requirements of the State law, and see that the teachers all attend the meetings that we call.

Q. Now, there is a station at Rockford, Illinois?—A. Yes; there is.

Q. And do you get reception from that station?—A. I don't particularly; but I know that the County Superintendent broadcasts from that station frequently.

Q. And that is WROK?—A. Yes; the County Superintendent from that county.

Q. You have heard him?—A. I have known he was going to be on the air, but I wasn't always where I had the opportunity to hear him.

Q. If you knew that the facilities of WKBB, East Dubuque, were available for broadcasting purposes—strike that. If the facilities of WKBB at East Dubuque are made available to you, would you employ them for these programs that you suggested?—A. I think we would; yes, if we had the opportunity.

Q. And you would be willing to do that?—A. Yes.

291 Q. You have never sought them?—A. No.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. Mr. Burns, you say you would employ the facilities of WKBB if they were made available. You may state whether or not that would depend upon whether they would adequately cover the territory in which you were interested?—A. Oh sure, if they would cover the county, and the hour of the day and everything else was all right when we had the opportunity, we might make use of them.

Q. That is all.

Recross-examination by Mr. GILLOON:

Q. What hour of the day?—A. Well, we haven't worked out a program or thought that out, but I should say that perhaps in the afternoon or evening.

Q. With your program that you propose through the State Teachers Association to lay before the Legislature of Illinois, what hour of the day do you think it would be best to put that program on? During the teaching hours or after the teaching hours?—A. No, the evening. We want to reach the people outside the schools. It isn't the teachers we want to reach. We

have already reached them; but it is the other people; board members and taxpayers and all these different tails to the kite that have to do with the public schools.

Q. And the evening would be the time to do that?—A. Yes, sir.

Q. That is all.

F. L. BURNS,
Witness.

Mr. CHARLES F. MARTIN, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

292 Direct examination by Mr. LOVETT:

Q. Your name and address and occupation, please?—A. Charles F. Martin, my address is Maquoketa; my occupation is County Superintendent of Schools.

Q. Mr. Martin, state whether or not you are generally familiar with the plan of the Telegraph Herald to establish a radio station in Dubuque to serve this area and nearby counties?—A. Yes, I am in a general way.

Q. Particularly in regard to the service that they propose to render the school systems?—A. Yes.

Q. Can you state of your own knowledge what has been the attitude of the Telegraph Herald in matters of education, particularly as they affect your area? A. Well, we have experienced a fine type of cooperation from the Dubuque Telegraph Herald in educational matters and educational policies. They have always been willing to take care of our school programs and other matters of interest to the public in giving us all the desired space and we have been happy to note at times editorials in their paper indicating what educators construe a progressive attitude in school matters; particularly rural problems.

Q. If they would be successful in their efforts to locate a station in Dubuque, would you be willing and desirous of cooperating with them in producing educational programs?—A. Yes, insofar as our program and facilities make it possible.

Q. Would you state to what extent and in what manner you would cooperate?—A. Well, that is a matter of cooperation. We would be willing to, in fact, I don't like the word "willing"; I believe we would be happy of the opportunity to get before our people certain types of educational programs, certain types of policies of which they are ignorant at the present time; and with the broadcasting facilities at hand we feel the opportunities there would be unlimited, and so far as setting up a definite program is concerned, I would be reluctant to go into that at the present

time, excepting to say that if we could have fifteen or thirty minutes a week to present some phase of educational program or policy to the people of Jackson County, I feel that would
293 be worth untold value. We find in our rural district that our school consciousness is far beyond what we would like it to be if we are to put on and carry on an educational program; and we, because of our limitations in our office from the standpoint of help, are unable to reach all the people in Jackson County and put these notions of better school programs across. I am not thinking of a program of a lighter nature; I am thinking of the fundamental things of education, and fundamental things of life, and that is what we have in mind. We have a State Superintendent of Instruction who is interested in improving our rural schools and a rural program in the schools, and we can go just as far as the people will go along on those things. In other words, we can't start out with a rural teaching staff in a county or rural area, and ignore completely the parents in the home in their knowledge and understanding of what we are trying to do is concerned; because any problem that is carried on without the consideration of the actual patrons of the school is, of course, doomed to failure, and we find that a problem in our county particularly, and when the people find the new things we are trying to do in the way of instruction—because of the fact we don't have the opportunity to contact the patrons in groups, it is quite impossible but with any county-wide program such as radio facilities in the homes, would make it possible. Now, perhaps that is not of the lighter nature such as we use our radios for today, but I think it is fundamentally of far greater value than spending a half an hour listening to a "jazz" program, or any musical program of that type, because we are trying to do the fundamental things of that sort, and that is what I feel would be the real value of that station which you contemplate erecting here in Dubuque. Now that is pretty general, and I don't suppose you want me to take time to go into details on that matter, but the same thing would apply to teaching, agriculture, and health. We have health programs in rural areas at times, the control of which parents and patrons know little, and we have attempted to put on a public health program, but due to opposing influences such as the Norman Baker influence a few years ago from Muscatine, we have practically had our hands tied in going very far with a health educational program. The radio facilities such as you contemplate would
294 help a great deal to get this information about controlling the contagious diseases; it would go a long way.

Q. You are referring to the regular weekly program that you suggest?—A. Yes. I mention that because that might be

worked in as an occasional hour or half hour or fifteen minutes, as a phase of education that these people in the country need very bad.

Q. Aside from these weekly broadcasts you recommend, would there be other occasions when you would make use of the facilities?—A. Yes. We in Jackson County value quite highly our rural chorus of boys and girls in the rural schools. Of course, you know the high plane of teaching rural school music: and the gist of the whole thing is to develop a rural school chorus in which we have all the pupils of the school. We have a junior and senior chorus which takes in the entire enrollment. Now each year we have a half or three-quarters of an hour set aside for the rural school chorus, and that is the thing the people come to hear; it isn't the commencement speech: it is the rural school chorus; and we feel a broadcast of that nature would take the program into the homes and make the people more aware of what the rural schools are trying to do. Then, we have a few r'ythm bands in our rural areas which are, I think, capable of putting on a short broadcast program, because it comes from children of the lower primary grades. It is quite phenomenal what they put on, considering the group that is putting the program on. I think it would have the same effect as a broadcast of the other type of musical program.

Q. Do you feel that would develope greater interest in the students about participating in the school activities?—A. There is no question in my mind about that. Of course, I have been speaking of the rural schools. The town schools with their bands and orchestras and glee clubs and all that sort of thing could make a much greater use of the facilities from the standpoint of broadcasting things of an entertaining nature. I feel for the rural schools it is better for educational matters.

Q. Would all this talent be available for broadcasting purposes?—A. Yes. Yes: I have no doubt but what if it is a matter of school adminjstration or policy, rather, of school admin-
295 istration. For instance, why, the weekly program is better than the daily program. Any school administrator of the rural schools could handle a broadcast on that I think very advantageously; and, it is something the rural folks want to know about; because of our set-up, the way it is, we can't get those things across to the people. We can't have meetings enough to get it across to give the people the whole plan of school administration.

Q. Would you use it for emergency announcements also?—A. Yes. The thought came to my mind yesterday that the broadcasting facilities could be used very definitely to take care of emergency cases such as we had last winter when the homes

and the roads and the mail service, and in a good many cases the telephone service were tied up; their radios were still working, and if we had had broadcasting facilities we could have sent out the word that the schools would be closed; when the wind was thirty miles per hour and the temperatures below zero; and the children wouldn't be in danger of bodily harm and possible loss of life. We had occasions last year when we had hoped to get word to the school directors and parents not to attempt to run the schools under conditions we had last winter; but, we had nothing available, and that would be a very definite way it could be of service.

Q. Are there school contests between the schools in your county which could be advantageously broadcast?—A. I am not quite so sure about the broadcasting facilities from the standpoint of rural contests; unless it is to broadcast the results of athletic contests. We have had spelling contests—I don't know just what value the broadcast of a spelling contest is, or what interest it would be over the air, but the matter of contests in your smaller town schools and larger town schools would be of a definite value; but I am at the present time uncertain as to what would be the value of these broadcasting facilities from the standpoint of rural school contests.

Q. Have radio facilities been made available to you for the purposes which you have just explained?—A. No; none.

Q. That's all; you may cross-examine.

Cross-examination by Mr. GILLOON:

Q. Now, do you know what the mileage is from Dubuque to Maquoketa?—A. 37 miles.

296 Q. And how far is it from Maquoketa to the southerly border of Jackson County?—A. Two miles.

Q. And how far is it from Maquoketa to the western border?—A. 12 miles.

Q. And to the eastern?—A. 30.

Mr. LOVETT. Road miles or air miles?

A. Road miles.

Q. It is approximately south, isn't it, from here?—A. The main street is exactly south of the Main Street of Dubuque. The road winds, however, it isn't exactly a straight road.

Q. How far is it from Maquoketa to Iowa City?—A. From Maquoketa to Iowa City, 75 miles on the shortest route.

Q. How far is it from Maquoketa to Davenport?—A. 38 miles, I think they call it.

Q. About the same distance as it is from Dubuque?—A. A mile or two further.

Q. They have a station at Davenport, do they not; WOC?—A. They have the WOC hook-up, but it is sold out. I don't think they have the broadcasting station there. WOC and WHO are combined—not any more. We never get WOC except when it was tied up with WHO; but I wasn't aware there was a station there now distinctly WOC.

Q. How far is Maquoketa from Cedar Rapids?—A. 65 miles.

Q. Do you know where the transmitter is located of the Cedar Rapids station?—A. Do you mean the broadcasting tower?

Q. Yes.—Q. Yes; that is about northeast of Cedar Rapids.

Q. North of Marion, isn't it?—A. Possibly a little north of Marion.

Q. A little closer to Maquoketa than Cedar Rapids?—A. Yes.

Q. That is station WMT.—A. Yes; I guess that is what they call the Cedar Rapids and Waterloo combined.

Q. That reception is carried into Maquoketa all right?—A. Yes.

Q. Good reception?—A. Yes.

Q. How long has this plan of broadcasting that you suggested here with reference to fundamental principals of education and health and all been troubling you?—A. How long has the problem been troubling me?

297 Q. Yes.—A. Well, it has been troubling me for nine years; ever since I have been in the County Superintendent's office.

Q. Have you been there for nine years?—A. Yes.

Q. Have you ever taken the matter up with Miss Samuelson, the Director of the State Schools?—A. Yes; I took it up with Mr. Baker.

Q. Have you ever taken the matter up with Miss Samuelson?—A. Yes.

Q. And have you ever taken the matter up with the authorities of the State University of Iowa?—A. No.

Q. Have you ever sought radio time?—A. No.

Q. On any station?—A. No.

Q. For the purpose of carrying out this program of yours?—A. I wasn't aware that such facilities were available.

Q. You never sought them?—A. No.

Q. From or through any stations that reach Maquoketa?—A. No. If I may offer a word of explanation there; it may have been due to the fact I wasn't aware that the broadcast time would have been given without charge.

Q. You didn't know that time devoted to the public interest was open to the public?—A. No; I know certain parties could get the time.

Q. Well, you have never gone into it very thoroughly?—A. No.

Q. The Congress has taken care of some of those things, you know, in controlling the air.—A. I see.

Q. There is a limit on air.—A. Yes.

Q. In employing the radio to carry on some of these fundamental educational policies that, you would think, would be valuable to the parents and the children; what hour would you think you should employ on the air to get an audience of the rural population?—A. Of the rural population?

Q. Yes.—A. Well, I realize, or appreciate, however, the fact that your evenings are quite largely taken up by your "network" programs.

Q. That is, you mean as a matter of choice?—A. Yes.

Q. On the part of the listeners?—A. Yes; I don't feel, however, that is a serious set-back or hindrance to successfully putting on an educational program.

298 Q. Maybe you are getting away from the question. What hour do you think should be employed on the air in order to get the best audience among the rural listeners of Jackson County who might be interested in your schools?—A. Taking all things into consideration as I know them at the present time, I would say during the noon hour, or during some hour in the afternoon.

Q. Would you expect the farmer to be in the house in the afternoon listening to the radio?—A. No; I wouldn't; but I do know it is the housewife that determines the educational policies of the home, and determines the attitude of the home toward public-health problems.

Q. You think she would have more time in the afternoon, doing her housework and chores and where she is a mother of children of school age, comparatively young and presumably having plenty of work on her hands?—A. Yes, I think the average housewife as you find them today can generally devote an hour or two in the afternoon that she can devote to leisure, in the average farm home today in this particular area, here, you understand.

Q. Do you think it compares well with the hour between six and eight when the children would be home from school and the father and mother would be home?—A. I qualified my statement. I said "in so far as I am aware" of conditions. You have your other programs of a popular nature on from six to eight.

Q. You think they would crowd out——A. The children?

Q. —the program you suggest?—A. Yes; and it is their program you listen to very often, rather than the one of an educational nature.

Q. If the facilities of WMT were made available, or the facilities of WHO, they would serve your purposes, would they not?—A. Well, the difference would be of a geographical nature there; of the hook-up, and we feel here that Dubuque is our next door neighbor, and we could—I know the station would be more readily accessible than if we had to go to Des Moines, or if they had to hook up with Des Moines for whatever broadcasting we wanted to do.

Q. Who would have to hook up with Des Moines?—A. WOC or whatever hook-up they would have to do with Des Moines.

299 Q. Well, I beg your pardon, I am confused on those two too; I thought they were together.—A. You had in mind the Davenport station?

Q. Yes.—A. Well, Jackson County is farther from Davenport by a great deal than it is from Dubuque. The north line of Jackson County is only about ten miles from Dubuque.

Q. Now then, you are aware that we have a station in East Dubuque with a studio in Dubuque, WKBB?—A. Uh-huh.

Q. Serving that territory?—A. I was made aware of that just last week. I didn't know it until then.

Q. You didn't know there was a WKBB here?—A. No.

Q. And you never sought their facilities?—A. Well, we aren't successful in getting their programs.

Q. Well, but you didn't know there was one.—A. No; but we work the dial over a pretty good range.

Q. No; but you didn't know there was one.—A. No. I was talking to a friend of mine last week and he was telling me how difficult it was to get the East Dubuque station.

Q. No; I move that be stricken out as hearsay. Just what you know yourself.—A. All right.

Q. If the facilities of WKBB were available to you in the same manner as this the facilities of this proposed station, were offered to you, would you avail yourself of them?—A. Yes; I would like to just lay a little stress on that, Frank. In the same manner——

Q. Yes.—A. That we in Iowa would have the same privileges and facilities as we would if it were in Dubuque.

Q. Yes.—A. Yes; we certainly would.

Q. Yes; WKBB?—A. Yes.

Mr. Lovett. And also equivalent coverage; you include that in your qualification?

A. Yes; surely. I repeated "in the same manner"; that would include all those angles of the broadcasting facilities.

Q. What is your understanding of the radius that this proposed station will accommodate, and that it will give good reception in, in Dubuque?—A. It is my understanding it will take care of the six adjoining counties.

Q. And what radius would that be in miles?—A. I can't say definitely.

300 Q. And what six adjoining counties do you refer to?—A. I refer to Jackson, Dubuque, Delaware, Clinton, in Iowa—what is that, four?—And the two to the east in Illinois; I don't know what they are; my geography is limited.

Q. It is in the record that it is 66 miles to the farthest point of Joe Daviess County from Dubuque. Is it your understanding that the reception will be clear that far from Dubuque?

Mr. LOVETT. We object to that as having nothing to do with the testimony of this witness. He has testified he was interested in the station covering Jackson County?—A. Am I to answer the question?

Q. I am asking you for your understanding.—A. I am not familiar with the—I might say the geography of Illinois.

Q. No, no. I am asking you in mileage.—A. I wouldn't know anything about the mileage of that. I wouldn't know what way to go to get there.

Q. No; I am asking you about the mileage in any direction.—A. No; the mileage hasn't been set up to me. It is more of a professional interest of mine, in view of an opportunity to get that service for Jackson County; and my interest hasn't gone outside of the county.

Q. And the southwest corner of Jackson County would be more than twelve miles from Maquoketa?—A. No.

Q. Yes; well Maquoketa and Monmouth, which are on an east and west line, are practically on the south line, and when you compare distances between Davenport and Dubuque——

Q. I am not talking about Davenport. I said the south corner would be more than twelve miles from Maquoketa?—A. What I was saying was in explanation of my statement that it wouldn't be very much over twelve miles. From the heart of Maquoketa, yes; but from the city limits it is twelve and a half.

Q. It would be 49 miles?—A. Monmouth, do you mean, the west end of the County?—Yes; if you went to Maquoketa and then west, it would be approximately 48 or 49 miles.

Mr. LOVETT. How far straight from Dubuque?

A. Well, if you can tell me how far it is from here to Bernard. I can give you a pretty good idea.

301 Q. Air line?—A. This isn't a road map, is it? [looking at a map.]

Mr. LOVETT. No.

A. Did you want the road distance on that, or direct?

Q. Air line.—A. Air line?

Q. Yes.—A. Well, I would say that the air line to the southwest line of Jackson County would not be forty miles.

Q. You haven't figured it out?—A. Well, I will back the statement, if you want to figure it out. I know how many turns there are in this road from here to Maquoketa, and that is only 36 miles.

Q. To the southeast corner of the county from Dubuque, is it a greater distance, or a lesser distance than to the southwest corner?—A. Greater. Slightly greater, yes.

Q. To your knowledge are educational programs broadcast over WSUI, the State University at Iowa City Station?—A. Yes, they are.

Q. And you get that reception in Maquoketa?—A. Yes, fair.

Q. And vicinity?—A. Fairly good; yes.

Q. How many miles is it?—A. 75 miles.

Q. Do you get educational programs from WOI at Ames, in that vicinity?—A. Yes.

Q. Of Maquoketa and Jackson County?—A. Yes.

Q. With the exception of the material that might be broadcast on these proposed programs that you suggest, the radio reception at Maquoketa and in Jackson County, is good from numerous Chicago stations and the Des Moines station and the Ames station and the Iowa City Station and WMT?—A. Yes. Yes, I would say they are.

Q. You have no difficulty in getting general radio service?—A. No, generally not. Iowa City is difficult to get, because—I don't know why. I guess their wave length is too close on the dial to another station. You can't segregate it very often. It isn't always the case. That may be the wrong term in there, I don't know—"segregation."

Q. Well, I think that is all.

Mr. LOVETT. All right, Mr. Martin.

CHARLES F. MARTIN,
Witness.

302 MARY A. MEYER, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your name and your address and your occupation?—A. Mary A. Meyer, County Superintendent of Schools; Elkader, Iowa.

Q. Miss Meyer, are you generally familiar with the plan of the Telegraph Herald to establish a radio station to serve this area, including all or the majority of your county, especially its plan in connection with educational matters?—A. Why, I understand it as you explained it to me.

Q. Can you state of your own knowledge whether or not the Telegraph Herald has been in the habit of recognizing the problems presented to the school system in your county and has cooperated with you so far as its news columns are concerned?—A. Why yes; they have so far as I know of.

Q. They have always done everything that you suggested?—A. I haven't suggested very many things to them, but they have always had some articles of education in their paper that I remember some of the pupils and teachers calling my attention to it when I come to their schools. Of course, I never thought of being asked this question before.

Q. Your experience has always been that they have taken an interest?—A. They have in the paper.

Q. In educational matters?—A. In educational matters. I don't recall now just what the items were, but I know they called my attention to two different things that they got out of the Dubuque Telegraph Herald.

Q. Are you familiar with the Iowa History Series that is used in the schools?—A. Yes.

Q. And that appears regularly in the paper?—A. Yes, and that appeared in the Des Moines Register also.

Q. And in the Telegraph Herald?—A. Yes, I recall it.

Q. It has been suggested that for the six counties which the proposed station is intended to serve in whole or part, that one day be allotted each week for the purpose of these counties
303 for weekly broadcasts to further their educational work.

Now if that should become a fact, would you be interested in, and desirous of cooperating in such a program?—A. Yes; I would.

Q. You feel that would be helpful in your work?—A. Yes; helpful in more ways than one.

Q. Can you illustrate in what way that might be used?—A. Well, as you mentioned in there a moment ago, of children attending school at the ages of four or five.

Q. Do you have that problem?—A. Yes; we do.

Q. Do you feel that the use of a regular program would be beneficial in influencing the parents in withholding the students until the school was ready for them?—A. Yes; if they can have someone besides the County Superintendents and teachers telling them to keep their children home until they are older than five.

I know I have had people talk on this subject and it has helped me at times.

Q. Now would there be special occasions when you would care to make use of these facilities?—A. Yes.

Q. Would you care to illustrate?—A. Well, if we had cold weather such as we had last winter, if we could broadcast and tell them to keep their children home or keep them there until the parents came after them in the evening, we could do that. Of course, that wouldn't be on the regular program, but if we could make those announcements at any time.

Q. And would you be interested, or would you consider it beneficial to broadcast graduation exercises or special exercises?—A. Yes; special exercises or any county programs the county might be interested in, such as—I can't think as fast as you want me to today—this is something I wasn't looking for. Declamatory contests and debates. We have a great deal of that in our county.

Q. Do you have musical organizations?—A. Yes; musical organizations. We have that, and we have glee clubs, and we have the—oh, different—we have the glee clubs and we have the band work and the solos might be used, and different reading could be used.

Q. Do you think that would increase student interest?—A. Well, I think it would for some of them. I don't know of any——

304 Q. I believe you have covered the ground pretty well. You may cross-examine, Mr. Gilloon. First, let me ask one more question. Have any radio facilities ever been offered to you in the past for the purposes that you have just been mentioning?—A. No; they haven't.

Q. That is all. Cross-examine.

Cross-examination by Mr. GILLOON:

Q. When were you first interviewed with reference to this application for a radio station by the Telegraph Herald, Miss Meyer?—A. Well, I don't recall the date.

Q. How long ago, approximately.—A. Perhaps two weeks ago.

Q. Prior to that time had it occurred to you, or had the value of radio service occurred to you at any time?—A. No; it hasn't.

Q. And you had given it no thought?—A. No thought.

Q. Up to the time you were approached on it by a representative of the Telegraph Herald with reference to your testifying on this hearing?—A. Yes.

Q. That is correct, isn't it?—A. Yes.

Q. And you never sought the privileges of any radio station which carries into Elkader and vicinity?—A. No; I didn't.

Q. Is there a radio station at Decorah?—A. I don't know. I never—I don't think there is.

Q. Do you know how many miles it is between Elkader and Decorah?—A. It is about 70 miles.

Q. How many miles is it from Dubuque to Elkader?—A. 60 miles.

Q. Sixty?

Mr. LOVETT. By road or air?

A. By road.

Q. Where is Elkader located with reference to the central point in Clayton County?—A. Well, it is just about in the center of the county.

Q. About in the center?—A. Yes.

Q. Approximately how many miles is it from Elkader to the western border of Clayton County, if you know?—A. From Elkader?

305 Q. From Elkader to the western—— A. About 20 miles.

Q. And from Elkader to the northerly line?—A. Yes, just about.

Q. What is the largest town in Clayton County west of Elkader?—A. That would be McGregor.

Q. West? That would be east, would it not?—A. That is east; yes. Strawberry Point is west.

Q. How many miles is it from Strawberry Point to Elkader?—A. 17.

Q. Seventeen?—A. 17 miles, yes.

Q. Is Strawberry Point—I mean the boundaries of the municipality, is that a school district of itself?—A. Yes.

Q. Do they have a superintendent?—A. Yes.

Q. How many days were the rural schools closed last winter on account of the severe weather or road conditions?—A. Well, I don't know. Some of them were closed for two weeks; just closed for two weeks, and others were closed from four to five days.

Q. Was that closing directed, or authorized by yourself as County Superintendent, or by the local boards of directors?—A. By the local boards of directors.

Q. Now, in availing yourself of the facilities of this proposed station to be located at Dubuque, in advising the parents respecting the advisability of keeping their children home, or keeping them in the school when weather conditions are bad so they could arrive for them; that would depend on the reception that was available in that community from this station, would it not? It would have to be clear?—A. Yes.

Q. Dependable reception?—A. Yes.

Q. And likewise, the fathers and mothers would have to have their radios tuned in at that particular point on the dial for you to depend upon it, wouldn't it?—A. Yes, that is quite true.

Q. And it really would not be dependable in your judgment?

Mr. LOVETT. I object to that question as it is based upon an unwarranted assumption.

A. Well, I don't know what answer I could make on that. I know that when nearly everybody turns in at a regular time, at seven and seven-thirty in the morning, that I know of, and of course, this would have to be broadcast at a certain time. I wouldn't know; I couldn't say as to that.

3306 Q. That is it. I mean the dependability of it for the purpose that you would want to employ it.—A. I know that, yes; that whether every parent would get in on it; I couldn't say as to that. I know everybody is there when it is time for the news to be broadcast; I know that.

Q. Now, you said the educational program you proposed with reference to discouraging children, or the parents of children of four or five years of age, from sending them to school; that is a matter that addresses itself to the Legislature, does it not, principally?—A. Well, yes; and no.

Q. Well, you have no way of keeping them out of the schools if they wish to send them to school?—A. They are open to them at the age of five; but they want to send them at four, a good many of them.

Q. Well, the teachers can refuse to receive them; and keep them out?—A. Yes, that is true; but we have a lot of trouble keeping them out when they send them. They won't go by what the teacher says.

Q. Have you given any thought to the most convenient hour, or rather the hour that might expect the greatest number of listeners?—A. Well, it would be in the——

Q. On the radios located in the rural districts? What hour of the day?—A. Well, it might be in the afternoon.

Q. How late in the afternoon?—A. Perhaps three o'clock or 3:30.

Q. You wouldn't expect the school children to partake in these programs?—A. They wouldn't be home.

Q. No, and you wouldn't expect them, and the programs wouldn't be directed to them, that you have in mind?—A. Well, yes; I would. It would be nice if the children after they get home from school, could hear them, and that would be after five. 4:30 and after five o'clock in the afternoon.

Q. Yes, and these children in rural homes; do you know whether or not they usually have chores to do that occupies their time?—A. Yes.

Q. That is usually true, is it not, after they arrive home from school?—A. Yes, that is the time the parents would probably be choring; after five o'clock.

Q. Yes, and the children old enough and big enough, would be helping them; is that true?—A. Yes.

307 Q. And that being true, would you move the hour of listening on toward the supper hour?—A. Well, I don't know; I haven't given that very much thought, but I think it would be a good idea to have it right at the supper hour; six or six-thirty, if you would want the children to get in on this program.

Q. Yes. Have you been informed as to the hour or hours that have been applied for in the operation of this station?—A. Well, I have; yes.

Q. What hours were you told that this station would operate between and during?—A. From six in the morning until eight in the evening; six or five-thirty; I don't recall.

Q. Six in the morning?—A. Until eight in the evening.

Mr. Lovett. Five in the evening.

A. Five?

Q. Well, now, which was it? Was it five or eight?—A. Five.

Q. So that the service over this station now as you understand it, would not be available at six and six-thirty?—A. Yes.

Q. So that would then, in your opinion, detract some from the full benefits of the program that you propose?—A. Why, I don't know if the parents would hear it.

Q. The children would not?—A. The children wouldn't hear it; no, but the parents would.

Q. Would you expect the farmer himself to be at the house himself in the afternoon listening?—A. I would if they were broadcasting that kind of a program.

Q. You think he could let his farm work go and go in and listen?—A. Yes.

Q. Do any educational programs come in over any stations that reach Elkader and vicinity now, that you know of?—A. Yes. Not during the summer I haven't heard many, but I do during the winter.

Q. You do during the winter?—A. Yes.

Q. And from what stations?—A. Ames and Iowa City, and then there is one from Washington, D. C., came in in the winter; I don't recall just what days. It came in at 7:15 for part of the year and then it was changed to nine or 8:30. I don't recall the hour, but I know we had it.

Q. And the reception of those programs on the radio that you listened to was good, was it?—A. Yes; it was. They were all good.

308 Q. Does WMT, the station at Waterloo, cover your territory?—A. Yes.

Q. Does WHO, at Des Moines?—A. Yes.

Q. And numerous Chicago stations?—A. Yes.

Q. And the community is well served with radios?—A. Yes; so far as I know; nearly everybody out that way has a radio.

Q. Now, in using the facilities of any radio station, either the Telegraph Herald or any other station, in broadcasting these proposed programs that you have mentioned, you would expect and contemplate that there would be clear reception at the other end; that is, that the radio would have strength enough and power enough to reach the listeners throughout Clayton County?—A. Yes.

Q. And if the power was not sufficient to give clear and adequate reception, then, of course, it would not be of value?—A. Well, I don't know. I don't understand what your mean by that.

Q. Well, do you know, Miss Meyer, anything in regard to radios and how they are set up and allotted a certain number of watts as power?—A. Do you mean if it wouldn't come in clear enough so we could understand what was being said?

Q. Yes. Then that would alter your testimony, would it not?—A. Well, I think it should.

Q. Yes?—A. I think it should.

Q. Were you advised what power this station was asking for? A. Well, I don't recall whether I was or not; I am not sure.

Q. You don't know now?—A. No, sir; I don't. I talked to Mr. Arndt when he was in the office one day and I was busy and I didn't listen to what he said, and I got busier after he was gone, and paid no more attention to it.

Q. If that point were mentioned or talked about, it didn't register, or you didn't retain it in your mind?—A. Why, it registered, but I didn't retain it; but I know he did say it would be strong enough so that we could understand or get what was being broadcast over the radio.

Q. That is all.

309 Redirect examination by Mr. LOVETT:

Q. Miss Meyer, in speaking of the weekly broadcasts in which you would be interested, to give as an illustration the talks of the desirability of keeping the children home around four or five years old; would or would not those talks be directed to the mothers?—A. Yes; they would.

Q. Well, the mothers would be in a position to hear such talks and the other talks directed to the educational policy of the home, in the afternoon before the children came home from school just as well as later, would they not?—A. Yes.

Q. So that after all, it wouldn't be essential to have the broadcast as late as 6:30 in the afternoon?—A. No; it wouldn't.

Q. Three-thirty would be adequate, as you stated initially?—A. Yes; indeed.

Q. Well, that will be all.

MARY A. MEYER,
Witness.

Mr. DALE D. WELCH, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. State your name, address, and occupation, Mr. Welch?—A. I am Dale D. Welch, President of the University of Dubuque at Dubuque, Iowa.

Q. Mr. Welch, will you state generally just what is the University of Dubuque?—A. The University of Dubuque is a Liberal Arts College and a Theological Seminary.

Q. From where does it draw its enrollment?—A. About forty percent of its enrollment is from the city of Dubuque; about thirty percent from territory within forty or fifty miles of Dubuque, and about thirty percent from the nation at large.

Q. Mr. Welch, are you generally familiar with the plans of the Telegraph Herald to establish a radio station in Du-
310 buque to serve this area and nearby counties?—A. I am in a general way, Sir.

Q. Will you state, if you can, of your own knowledge, what the attitude of the Telegraph Herald has been toward education and particularly toward your institution?—A. Well, I can speak only for our own institution; but the attitude of the Telegraph Herald toward us has been one of exceedingly great friendliness and cooperation. They have given us all the publicity that we care to furnish them at all times of the year; in particular in connection with our occasional financial campaigns in Dubuque they have given us publicity that if it were paid for at any sort of a rate, that would be worth a great deal of money.

Q. And all this publicity has been freely given?—A. Oh, yes.

Q. Now if the Telegraph Herald would be successful in its efforts to establish this radio station, to what, if any, extent would your school or University be desirous of making use of its facilities?—A. Well, if a private line were established to the University so that we could use the station without transporting our talent downtown, we could make quite a good deal of use of it. We could even without the line use it for certain types of program; but with a private line we could present musical

programs which wouldn't be possible without the private line. For example: We have a fine pipe organ and a very good organist, but you can't transport that program away from the institution. We have a fine choir. They can be moved, but not conveniently, a group of sixty voices. If we had a private line we could use that choir quite often for broadcasts, and we would be happy to do that.

Q. Well, would you be desirous of using these facilities regularly at given periods each week on certain days of each week?—A. Yes; we could use, I should think, at least three regular periods a week, exclusive of what might be done with our organ. That would be available more often if it was wanted, but we could use a period for a musical program once a week; a period for an educational program, and a period for—if we could have a Sunday afternoon vesper service, for a distinctly religious service.

311 Q. And what form would your series of talks attain?—A. Do you mean the educational program?

Q. Your educational program; yes.—A. Oh, I don't have any definite thing in mind there; but to illustrate: a man like Dr. Ficke, the head of our English Department, a Harvard graduate, and one of the finest English scholars in the middle west, might present an interesting and informing series of short lectures; fifteen minutes perhaps on, for example, the English poets, or the humor of Shakespeare, or Shakespeare and the law. That illustrates the type you could get from the English Department. The Philosophy Department might give a series of short talks on the life and work on a dozen of the leading philosophers, popularizing it in such a manner as to make it palatable to the general listening public. That is what I have in mind as an educational program.

Q. And you have a musical series, you say, for another period; and vesper service on Sunday?—A. Well, roughly, for the musical program we would use our choir of sixty voices. That organization is one of the best musical organizations in this section of the country and would be available quite often. We have an excellent male quartette that could be used. Solos, both vocal and instrumental. We have a good orchestra that could be used from time to time. That will represent the general tenor of our musical programs. The Sunday afternoon vesper service would be a service both musical and religious, because we have the Theological Seminary; we have on the faculty always, some very able preachers, men who go all over the middle west supplying churches, and who have a considerable following as preachers. I think the public in our territory would be very interested in a vesper service in which we would have music, using again our

choir or quartette, and organ, though that service would be mainly religious, using one of the men from the Theological Seminary.

Q. In addition to these regular broadcasts which you propose, would there be special occasions when you could use these facilities to advantage?—A. There would, occasionally. We have on the campus a number of times a year outstanding speakers at our morning chapel services, whose addresses would be of
312 interest to the general public. Once every year we have a week of programs with out-of-the-city speakers, speaking at ten o'clock in the morning; usually some outstanding churchmen who would be heard, I think, with interest by the local public. There would be other occasional events, but what they would be, it is hard to say. This year, for example, the 30th of October there is to be a rather extensive program from ten o'clock in the morning until 4:30 in the afternoon, and it happens to have to do with my formal inauguration as President of that institution. We will have outstanding churchmen who will speak, and have a continuous program from ten in the morning until 4:30 in the afternoon. That doesn't happen every year, but it is the occasional thing we have of interest.

Q. And you feel you would like to have the opportunity of broadcasting such an event?—A. Well, that sort of thing we would; yes.

Q. That is all; you may cross-examine.

Cross-examination by Mr. GILLOON:

Q. You have been living in Dubuque a good many years, Mr. Welch?—A. 20 years.

Q. Twenty years?—A. Yes.

Q. That is continuously last past?—A. Well, there is a two and a half year period in there that I lived at Epworth.

Q. Are you acquainted with station WKBB of East Dubuque, with a studio at the Hotel Julien in Dubuque?—A. Yes.

Q. You have used that station yourself in broadcasting?—A. I have.

Q. You have appeared on that station on Sunday morning services conducted by the Protestant Ministerial Association?—A. I have.

Q. From nine to nine-thirty?—A. I have.

Q. And that has been on several occasions?—A. Well, I have only been on the program once, myself.

Q. Only once?—A. Yes.

Q. Other ministers from Dubuque appear on the program; that is, one each Sunday?—A. Yes.

Q. Isn't that a fact?—A. Yes.

313 Q. Now, you have given talks over the Dubuque radio, aside from participating in the Sunday morning, or conducting the Sunday morning service?—A. One such talk personally.

Q. Yes. That had to do with and concerned the University of Dubuque?—A. It did; yes.

Q. The University of Dubuque put on a drive for funds sometime this year, did it not?—A. Yes.

Q. Was that after you had been made President, or before?—A. After.

Q. After?—A. Yes.

Q. Now state whether or not the facilities of the station WKBB were offered to you at that time to promote the interests of the campaign for funds?—A. They were.

Q. And did you avail yourself?—A. Yes. That is when I made this talk that you referred to a moment ago.

Q. Yes. Now, you know as a matter of personal knowledge, do you not, Mr. Welch, that the A. Capella Choir, and these sixty voices you speak of *of* the University of Dubuque have appeared over the station WKBB?—A. Yes; I do.

Q. And your male quartette has also appeared on the station?—A. That is right.

Q. And soloists from the University have also appeared on the station?—A. That is right.

Q. I will ask you if it is not a fact that the station WKBB has offered its facilities to the University of Dubuque and has offered to give you the use of the station through remote control from the University?—A. Yes; they have. Our problem, however, in connection with that offer was of establishing a direct line, which we couldn't afford to do, and therefore we couldn't avail ourselves of the offer.

Q. Well, that goes with the remote control, does it not? You have to get it to the transmitter?—A. Yes.

Q. Your talent that you spoke of has appeared frequently over WKBB?—A. Our musical talent; yes.

Q. Your musical talent?—A. Yes.

Q. And some of your professors who are ordained ministers, I take it that they have participated in the Sunday morning services?—A. Yes; they have.

Q. Have you ever been refused the facilities of WKBB when you requested them?—A. No.

314 Q. You feel that they are available to you for educational purposes, or whatever might fall within that; that is, first-class music, and all?—A. They are, excepting we haven't the direct line, and it isn't practical for us to send our talent downtown to broadcast.

Q. Any station that you would use then, so that this talent might be available without sending it to the station, would have to be utilized through these instruments of remote control from the University itself?—A. That is right; for us to use it consistently and extensively, we must have a direct line; and, I might say, I don't know whether it ought to be in the record or not, but this is true; but the Telegraph Herald has offered to provide that line for us, which is a great consideration for us, and makes their station really accessible to us, and they have offered to give us all the time we want after the line is installed, for musical and educational purposes.

Q. That is, the line would be left open, as you understand it, for your accommodation?—A. Yes.

Q. At such hours as you wish to avail yourself of?—A. That is right.

Q. And have you gone so far as to plan what hours you would utilize if this station were granted, with this talent?—A. Roughly; yes. We have outlined three four-o'clock hours a week; one for music and one for educational program, and another for a religious Sunday afternoon vesper service.

Q. Three hours a week?—A. Three periods a week; not full hours.

Q. Three periods a week, and what precise hour of the day?—A. Four o'clock.

Q. From four o'clock on?—A. Yes.

Q. Now, why do you fix that at four?—A. It happens to fit in with our academic schedule; a professor, for example, finishing his classes at four o'clock could go right to the radio and give his lecture.

Q. That is the end of your class period?—A. Yes. The students on the musical program can go right from their classes to the studio and give their program.

Q. Uh-huh. Have you been informed as to the hours that have been applied for by this station?—A. Yes.

Q. And what do you understand those hours to be?—A. From sunrise to sunset.

315 Q. Sunrise, or six o'clock in the morning?—A. I understand it would be sunrise.

Q. Are there other colleges in the City of Dubuque?—A. There are.

Q. I will ask you if one of those is Columbia College?—A. It is.

Q. And Clark College?—A. It is.

Q. What is the enrollment of the University of Dubuque? What was it last year?—A. 354.

Q. Do you know what the enrollment was of Columbia College last year?—A. Not accurately.

Q. Do you know approximately?—A. I shouldn't like to say that.

Q. Well, if you don't know—— A. I don't know it near enough.

Q. I thought as an educator, you would.—A. No.

Q. Do you know what the enrollment of Clark College is?—A. No; I do not.

Q. Those two colleges likewise have talent running along the lines that you have enumerated as being in your college?—A. They do; of course.

Q. Columbia College has the Vested Choir of boys?—A. That is right.

Q. And Clark College is quite recognized for its musical chorus, is it not; for girls?—A. I think so.

Q. That talent is available in the city of Dubuque from those two?—A. As to that, I couldn't say. That is a matter for their people to determine; not for me.

Q. And aside from this direct wire to the University furnishing you with the facilities of the present station, why, you understand that you may avail yourself, or the University may avail yourselves, of the facilities of the station as it exists now, by going to the station in Dubuque?—A. Well, we understand that; but there are two problems in connection with the use of WKBB that we do consider real problems, aside from the direct line, and the one is it hasn't the facilities for publicizing the broadcasts. We think that if the newspaper were to announce regularly a University hour and the nature of the program, that we would have a much larger listening public. We may go to a station and put on a program and have nobody listening to it; it hasn't done anything for the University nor the station; so in that respect it seems to us that the facilities the Telegraph Herald might offer would be advantageous in that their newspaper would cultivate a listening public. Secondly, we can reach a greater distance with the facilities the Telegraph Herald is proposing to establish. The territory territory they are going to cover is exactly what we get our clientele from.

316

Q. What is that?—A. The city of Dubuque, and forty miles, except in Illinois we will reach a little more than forty miles in our territory, but in Iowa and Wisconsin we consider forty miles is about our territory.

Q. What do you understand the radius of the proposed station of the Telegraph Herald will reach out in miles?—A. I understand it will reach such towns as Guttenberg.

Q. No; I mean in miles.

Mr. LOVETT. He stated forty miles.

Q. He hold me about his radius. Did you mean by "forty miles" that that is the radius of the station, or the radius from which you draw?—A. I understand that this station will reach forty miles, and that that happens to be almost exactly the limits of our area of influence, excepting in the State of Illinois, where we reach beyond that.

Q. Now, with reference to attracting this radio audience you speak of through the medium of the Telegraph Herald. Now, do you mean that that audience will be attracted to the radio as listeners by reason of announcements that will be made over the radio when it is installed, or by reason of the publicity that will be carried in the newspaper?—A. By reason of the publicity that will be carried in the newspaper.

Q. Do you mean now, that the Telegraph Herald gives no publicity to the programs of the present station, WKBB?—A. I don't know whether they do or not.

Q. If they did, wouldn't you have the same audience listening, and if the program showed that the A Capella Choir of the University of Dubuque will appear on the program at a certain hour, would you expect to have the some listeners in the radius that will be covered by WKBB?—A. Well, I don't want to appear partisan in this matter——

317 Q. Yes, but——A. Well, obviously, I wouldn't expect the Telegraph Herald, which is an institution, to give publicity to our programs over any other station.

Q. When they are without a station?—A. Either without it or with one.

Q. They could have no good and legitimate reason for not publishing those programs if they were not operating a competitive station, could they, in your judgment, as a newspaper serving the public?—A. Well, I think they might have a good reason for not doing it.

Q. Now what would that be?

Mr. LOVETT. I object to this as entirely incompetent, irrelevant, and immaterial.

Q. Well, I want——

Mr. LOVETT. I don't care what you want; it is entirely immaterial.

Q. Now, what would they be?—A. I conceive the newspaper and the radio to be competitors.

Q. In what way?—A. In the dissemination of news and information of public concern; in the presentation of not only news, but entertainment, and to expect one competitor to advertise and underwrite the product of—one concern to advertise and underwrite the product of his competitor, is, to my mind, a bit ridiculous.

Q. Aside from the superficial competitive interest of each institution: if we set that aside, in serving the public interest, it would be best that it would publish it, would it not?

Mr. LOVETT. I object to that as entirely theoretical and immaterial and has nothing to do with the examination.

Q. When you take into consideration aiding the public in an educational radio program?—A. I think that is right.

Q. It is the offer to install a private line to the University of Dubuque by the Petitioner that tended to induce you to favor that station over WKBB?—A. No; that is just an incident in it, Mr. Gilloon. The real reason is the wider coverage of their station and the advantage of having it in connection with the newspaper which may publicize our programs. The private line is but an incident. There are three factors—the private line, the wider coverage, and the publicity which the newspaper can give to our programs.

318 Q. Did the representative of the Telegraph Herald that spoke to you on this subject to explain to you their proposed plans of operation, mention anything about the publicity that would be given to the programs through their press?—A. Well, we discussed it. I don't know whether he raised the point, or I did. I have been conscious of that as a need. We discussed it.

Q. And what was said in the discussion by the representative of the Telegraph Herald?—A. It was merely an informal conversation on it, and I couldn't repeat with any accuracy what either of us said.

Q. Was there anything said in the conversation that no publicity was given to the programs offered over Station WKBB in the Telegraph Herald?—A. Nothing said about it.

Q. Not mentioned at all?—A. No.

Q. They did advise you at that time, their representative did, that if granted this permit they would install a private wire at the University?—A. It was a sort of a general agreement. There was nothing definite about it at all.

Q. Well, you understand that they will do that?—A. I do.

Q. If this license is granted to the Telegraph Herald for which they are applying for, and they should establish a station in the city of Dubuque, would you then, and from and after that time, use the Telegraph Herald Station in preference to Station WKBB, and would you stop your present cooperation with WKBB?—A. That would have to be determined upon the contingencies of the moment. I can't answer what I would do six months from now. Too much water can go over the dam between now and then.

Q. In furnishing your choir as has been done in the past, and male quartette, and soloists, would you be willing to do that and furnish that talent to WKBB if time would be made available to them on this proposed station of the Telegraph Herald?—A. I see no reason at the moment, Mr. Gilloon, for saying that we wouldn't make our talent available to them; but again, that is a remote contingency concerning which I can't express a final judgment at this moment.

Q. Now, Mr. Welch, you spoke of WKBB and the Telegraph Herald as being competitors. Now, I will ask you if it isn't a fact that they are only competitors in the field of
319 advertising for a monetary consideration?—A. I wouldn't feel it is just there. I feel they are both disseminating news.

Q. You do not feel that they are competitors in the field of public service, do you?—A. I don't think we think of a public service rendered in terms of competition, but the thing that enables us to get public service may be competitive.

Q. The newspaper serves a public in its field, a public purpose, and the radio also furnishes a public service, does it not?—A. I think so.

Q. And in those fields they would not be considered competitive, would they?—A. No, but my point is——

Q. The newspaper and the radio?—A. My line of reasoning is, without the advertising and the income, neither one of them would be in existence to preform the public service.

Q. And, you think the Telegraph Herald, if it had both the radio and the newspaper, that it would thereby have a monopoly in this territory?—A. No, I don't think it would have a monopoly at all.

Q. That would eliminate this competition you speak of?—A. No; not at all. They would merely operate a more efficient unit than can be operated without the aid of a newspaper.

Q. By reason of their publishing their own programs in their newspaper, is that the reason?—A. And by reason of the availability to them of news service that an independent station without a newspaper may not have.

Q. Do you know what news service WKBB has?—A. Well, I think I had better say that I came down here as an educator and not as a newspaper man; and I am not going to attempt to answer outside my field.

Q. Well, do you know?—A. I do not. That is why I am not trying to answer.

Q. Do you know what service the Telegraph Herald has?—A. Not in a definite way; no.

Q. I think that is all.

Re-direct examination by Mr. LOVETT:

Q. Mr. Welch, how frequently did your musical and religious talent use the facilities of the East Dubuque
320 Station last school year?—A. Well, I am not sure as to that. My work at the University actually began only on April 1st, and it wasn't with any regularity. I suppose that our talent appeared on the station during the last semester of the school year maybe a dozen times. That is a guess, but I think that is about right.

Mr. GILLOON. I move that the answer be stricken out for the reason the witness states it is only a guess.

Q. With no regularity?—A. No, with no regularity.

Q. Do you know why?—A. No, I do not.

Q. That is all.

Re-cross examination by Mr. GILLOON:

Q. Prior to April, at the time you were appointed President, were you directly associated with the University regularly on the teaching staff?—A. Not recently.

Q. I am speaking of before April; last semester. That part of the last semester prior to April?—A. No, I am not on the teaching staff now.

Q. Well, you are President now. I appreciate that; but prior to that time were you devoting your time to the University?—A. No, I wasn't. I was President of the Board of Directors and as closely in touch with it as I am now.

Q. Attending meetings of the board of directors?—A. And the Executive Committee.

Q. I think that is all.

DALE D. WELCH,
Witness.

Mr. FRANK R. KERRIGAN, called as a witness on the part of the Applicant, after having been first duly sworn by me, as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your name, your address, and occupation.—A. Frank R. Kerrigan, County Agricultural Agent, Dubuque, Iowa.

Q. Mr. Kerrigan, are you generally familiar with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes.

321 Q. Will you state, if you can, what the attitude of the Telegraph Herald has been toward Agriculture in this area; whether or not is has participated in any way in assisting the dissemination or writing of agricultural news and so forth?—A. Well, they have been very helpful through their news columns,

and carry on any agricultural activities that I have been interested in; yes.

Q. They have always cooperated with you to the fullest extent, have they?—A. Yes.

Q. It has been suggested that over this proposed station of the Telegraph Herald that one day each week be allotted to the six counties, including Dubuque County, of course, which will be served by the proposed station, and if the station becomes an actuality would you be interested and desirous of cooperating in such a plan?—A. Yes; I would cooperate.

Q. In what way do you believe that would be helpful to you in your work?—A. Of course, you see, we are an educational institution, partly at least, and we are interested in getting the correct information out in any way that we can, and through as many different channels as we can; and we would be happy to continue with the Telegraph Herald in furthering our programs through their channels.

Q. You may state whether or not the Four-H Club activities come under the jurisdiction, or are you connected in any way, with your department?—A. Yes; I have charge of the Four-H Club work in this particular county.

Q. Would you plan to use these facilities in connection with the Four-H Club?—A. Yes; from time to time we would use them. Members of the Club are—some of the committee members who have charge of the work. Yes; we would.

Q. To supplement your own programs and also broadcast programs of their own, is that true?—A. Yes.

Q. To what, if any, extent would you use the facilities in connection with emergency or special announcements?—A. Well, we would be glad to do that. Yes, indeed; I would be glad of the opportunity.

Q. There would be times that it would be quite essential that you reach the farmers in this area immediately.—A. Well, of course, I am only interested in the farmers in my own territory; that is, specifically in Dubuque County.

322 Q. But you would be interested in using these facilities—for having them available at all times for weekly broadcast?—A. Yes.

Q. That is all.

Cross-examination by Mr. GILLOON:

Q. Has not the facilities of WKBB been made available to you?—A. Yes, sir.

Q. In fact, you use the facilities of WKBB in making a talk on the subject of agriculture once each week on Monday?—A. Yes, sir.

Q. And you have done that for some time Mr. Kerrigan?—A. Yes.

Q. Through WKBB?—A. Yes.

Q. And have you ever requested the facilities of WKBB in your farm work when they were refused to you?—A. No.

Q. Could you not use the facilities of WKBB in reference to the Four-H Club and broadcasting their programs having to do with the farmers you might over this station of the Telegraph Herald?—A. I believe that I could; yes.

Q. You say that the attitude of the Telegraph Herald has been good with reference to giving publicity to matters pertaining to agriculture?—A. Yes.

Q. I will ask you what has been the attitude of Station WKBB with reference to matters pertaining to agriculture?—A. As far as I am concerned, very good.

Q. Yes. I will ask you if you know it to be a fact that they carry an agricultural program from 11:45 to twelve o'clock each day of the week?—A. Yes, sir.

Q. They do, do they not?—A. Yes, sir.

Q. And with reference to emergency matters, whatever that might include, whether the grasshopper plague or hog cholera or anything else, if that emergency should arise, do you have any reason to feel that if you sought the facilities of WKBB that they would be denied you?—A. I don't think they would.

Q. They never have been denied you in any of those matters?—A. No.

Q. And in serving your constituency in Dubuque County, why, Station WKBB answers that purpose on the air?—A. Our people can hear it; yes.

323 Q. I think that's all.

Mr. LOVETT. That is all.

FRANK R. KERRIGAN,
Witness.

Notary Public. 5:40 o'clock P. M. We will adjourn until 9:00 o'clock in the morning.

9:00 o'clock A. M., August 22nd, 1936.

Monsignor J. M. WOLFE, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Your name and address, and occupation or position.—A. My name, Monsignor J. M. Wolfe; my address is 11th and Bluff Street, Dubuque, Iowa. I am Superintendent of the Archdiocese.

schools of the Archdiocese of Dubuque, and Director of Catholic Action in the Archdiocese of Dubuque.

Q. Monsignor, will you state briefly the extent of the school system over which you have jurisdiction, and particularly the extent of it within a radius of forty or fifty miles of Dubuque?—A. Within the Archdiocese of Dubuque, comprising all the northeastern territory of Iowa, running north and south about 200 miles and east and west 200 miles.

Q. Can you say approximately the number of schools within a radius of forty or fifty miles of Dubuque; just roughly?—A. I would say about twenty-five secondary or high schools, and fifty elementary schools.

Q. Monsignor, are you familiar in a general way with the plans of the Telegraph Herald to establish a radio station in Dubuque to serve this general area?—A. I am quite familiar, because I have discussed the matter with representatives of the Telegraph Herald on the project they are proposing with the Federal Radio Commission of a license for a station in Dubuque.

Q. Will you state the attitude of the Telegraph Herald in the past and now toward your activities and particularly as manifested in an educational way?—A. I have always
324 found the Telegraph Herald most cooperative in giving publicity to any projects that I have promoted, either public or in a semiprivate way respecting the religious, educational, and cultural advancement of the people.

Q. If the Telegraph Herald be successful in its efforts to establish a station as proposed, to what extent would you utilize the facilities of that station, and in what way?—A. Well, I would cooperate in every way possible with the program director who would be immediately in charge of the programs, to be given over the Telegraph Herald station. This cooperation would extend itself to all of the programs which I could help him devise as coming from the schools, and any cultural or recreational activities which we might sponsor.

Q. These activities would be helpful to you in the furtherance of your educational work?—A. I think it has a two-way circuit. It helps those who are promoting a program of that kind, the participants, and it helps the listeners far and near. There are contributions coming from both sides.

Q. Would you be interested in cooperating in broadcasting a program regularly over this station, as well as on special occasions?—A. I would help the program director devise for stated occasions particular programs, and the schools that would be able to participate in programs of a cultural, educational, and religious nature.

Q. Will you state for the record the various departments in the school system which might be—which in particular, might have talent for broadcasting purposes generally?—A. Do you want me to speak for the colleges in an indirect way?

Q. Yes, if you will, please.—A. Well, we have two colleges and the twenty-five secondary or high schools I have mentioned; these institutions have musical and literary organizations which would find it to their advantage to participate in activities of that kind, and prepare programs fairly regularly.

Q. Are there any musical organizations or choirs such as choirs of particular note?—A. There are glee clubs, of course, in practically all of the high schools; and in our colleges we have exceptionally fine choirs, particularly the Boys' Vested Choir, at Columbia College, which has a national reputation; with a director who is competent in every way.

325 Q. You feel that all these organizations would be available from time to time for broadcasting purposes?—A. I believe they would.

Q. Are you prepared to speak for the musical department of Clark College?—A. I am not authorized to speak for them; but from experiences of the past I have always found them most anxious to participate in activities of that kind to advance the culture for which the institution has been established, and the education of all those who might be helped by any of their programs.

Q. Will you also be interested in using the facilities for programs of a religious nature of any special character?—A. Whenever anything of note, state-wide or of national importance is being enacted in our churches. In the past I have always made an effort to secure the radio facilities of Dubuque, Davenport, and Waterloo; and in the future; quite naturally efforts would be made to get the best type of broadcast over a local station.

Q. One which would most effectively serve the area of which we are speaking?—A. Yes.

Q. All right; that will be all. Cross examine.

Cross-examination by Mr. GILLOON:

Q. Monsignor, when were you advised with reference to the details of the plan to construct and establish the local station applied for by the Telegraph Herald?—A. Some three weeks ago, by Mr. Mark Kane representing, as far as I knew, the Telegraph Herald; and some five days ago by Mr. Kane and another representative of the Telegraph Herald, Mr. Arndt.

Q. And in those conversations what is your understanding with reference to the radius in miles out of Dubuque that reception will be good?—A. The information I gathered from the men who

spoke to me about the establishment of the station was that they would cover well a radius of fifty miles.

Q. Did they advise you with reference to limitation of hours applied for? That is, the time that the station will broadcast?—

A. Some days ago in discussing that matter the project of
326 evening programs came up, and then I was told that the station would broadcast only until sunset time at first, hoping that in due course of time their license would be extended to the night hours also; the usual eighteen hour broadcast extension.

Q. But you fully understand that the present license is only for the so-called daylight hours?—A. I do.

Q. And you also understand that the daylight hours as known to radio consist either from sunrise, or I believe six o'clock in the morning, whichever it may be, until sunset?—A. I do.

Q. As sunset in the particular area covers?—A. I do.

Q. And you also understand that the sunset time for in this territory in January, November, and December ranges from 4:30 to five o'clock?—A. I do.

Q. Now Monsignor, in your office as Superintendent of schools of the Archdiocese of Dubuque, and Director of Catholic Action, have you been afforded the facilities of the local station, WKBB?—In as far as they were able to give us service. They left me with the impression with the second last—that was last year, about this time when we had a large convention here, when I attempted to get broadcasting, that they were very much a commercial station; at the time they weren't looking so much for cultural programs as for the commercial type of broadcasting program.

Q. Who did you talk with?—A. Mr. Price, I think, or Mr. Martin; the one I think who was at the local station at the time, and Walter Klauer.

Q. Where was this convention being held?—A. In Dubuque.

Q. At what——A. At Columbia and Clark College.

Q. Your request was to broadcast it from the floor of the convention halls?—A. Well, from the conference halls and also from our local Cathedral, because we had quite a great deal of splendor down there at a couple of our religious programs.

Q. What would have called for the extension of a wire from the studio to the halls?—A. Yes, sir; for which I was willing to stand the expense of the wire.

Q. You have talked over the station yourself?—A. Yes.

Q. From the studio?—A. Yes; several times.

327 Q. Were the facilities of the station employed in connection with Lenten services conducted on Good Friday

last year by the Catholic Church?—A. Well, there was; at a late hour the evening before I think the director of the station or the owner, Mr. Klaner, thought that a religious program would be very wonderful on Friday afternoon; the United Protestant Choir had already been arranged for, and they asked me in the afternoon to speak during the three hours, and their importunities were so extensive that I went down and did the best I could, but it was prepared specifically for this choir; that is, prepared specifically for that occasion.

Q. It was not the Catholic Church alone?—A. No.

Q. You cooperated with the other churches?—A. Yes.

Q. Now, Monsignor, this national convention that you referred to that was held last year, was that the 9th National Convention of the Catholic Students Mission Crusade?—A. It was.

Q. Was that held in Dubuque between the dates inclusive, of August 6th to 9th?—A. It was.

Q. Now, Monsignor, I will ask you for the purpose of refreshing your recollection if the program, the part of the program that was held at eight P. M., opening with meeting on the porch of Loras Hall, Columbia College, at eight P. M., if that was not broadcast including an orchestra prelude to the Sign of The Cross, Edward W. Schroeder Jr., Columbia College Orchestra, under the direction of Edward Schroeder, with a wire——A. It was.

Q.—extended, and you in your official capacity provided the wire, and the facilities of the station were extended to you without charge other than the wire?—A. Yes; that was from—I suppose I shouldn't say this because I would have to make it definite; because I would have to look up the records; it was from eight to nine, I believe. I believe they closed the station at nine o'clock, and we extended our program to half-past ten. That was one of our difficulties at the time, getting the better part of the program at the beginning, or hurrying it on so we could start at eight o'clock when I had the concessions of the radio station.

Q. That was Station WKBB?—A. Yes.

328 Q. And I will ask you if the facilities of that station were not employed on the following day, August 7th, in connection with the same convention, with a wire provided in the same way to St. Raphael's Cathedral for the celebration of the Pontifical Mass?—A. I don't believe it was.

Q. For the purpose of refreshing your recollection, may I ask you to look at this program?—A. That is a copy of the program at the time, but this program was drafted when our arrangements were tentative. They were going to give me those facilities, but they didn't. There was a commercial program, I think,

at that time; I asked them to postpone or advance this particular hour, so as my recollection goes, we wern't connected up. We had outdoor loudspeakers.

Q. This was at the Cathedral that I am inquiring about.—A. We had it outside at the Cathedral, but if I recall right, I didn't get the facilities of broadcasting from the station, but it was in the program.

Q. In order that we have the record straight, Monsignor, will you—have you any way of checking that after you leave the witness stand and go back to your office?—A. I suppose I would. I suppose I would.

Q. May I phone you on it?—A. Yes.

Q. Will you be at the office until noon?—A. Well, I would want to see Father Peters; he is the agent that usually executed those things for me. He is the one that rigged up the outdoor loudspeakers and had charge of that and he would have known at the last minute if they got in there on me. You see, I was terribly busy, but my recollection is that I couldn't get the connection from the radio station on account of the commercial project that they had on at the time.

Q. Monsignor, I will ask you too, if you didn't also have a wire extended to Loras Hall over which, connected with Station WKBB, at this same convention over which broadcasts——A. Thursday?

Q. —of various musical features of the program on August 8th between the hours of eight and nine P. M.?—A. Yes.

Q. I will show you——A. Yes, yes. I had the evening programs from eight to nine. I have a clear recollection on
329 that, because I went in and phoned people around town to see if it was coming in all right on the radio in addition to the loudspeakers we had.

Q. So that you would now modify your previous testimony to the extent that when this convention was in Dubuque between August 6th and August 9th, 1935, that you did have at least the hook-up for two broadcasts over the local station?—A. What do you mean? Those evenings; Tuesday, Wednesday, and Thursday.

Q. Yes.—A. Three evenings; yes, surely.

Q. I gathered from your previous testimony that you had no hook-up with the convention.—A. No; I believe I had. I would have to look up the records, eight other broadcasts by men of national repute whom I had written, and I did go down to the station in the daytime and announce that such and such a speaker was going to appear and speak on such and such a subject. I had difficulty arranging those programs, but I got the facilities

because I wanted to give that to the public, because I wanted to make it a success; fifteen minutes.

Q. Speaking time?—A. Yes.

Q. For each speaker?—A. Yes.

Q. And they were—those speakers were dealing with a subject of an educational nature?—A. Yes.

Q. Now that was all without charge?—A. Yes.

Q. Excepting the cost of the wire on two or three hook-ups where you had remote control?—A. Well, I suppose I shouldn't say this, so I will keep out of the record, but they sent me a bill beyond the agreements we had made. I kept a record of the agreements we had made and there was something like seventy-five or eighty dollars over what we had agreed, but I returned the bill with the check for what we had agreed, and let the other services out.

Q. That is all you paid, was what you had agreed to pay?—A. Yes; the bill didn't come back, so I took it they had made a mistake, because they made no effort to collect.

Q. In your office as Superintendent of the Archdiocese of the schools of the Archdiocese of Dubuque, you have supervision over the high schools in the territory included and the elementary schools?—A. Yes.

Q. You do not have direct supervision over Columbia College?—A. No.

330 Q. And you have no direct supervision over Clark College?—A. No. We cooperate in things of that kind, but I get the action through the Superiors.

Q. And in Columbia College and Clark College you could do no more than use your good offices?—A. No.

Q. Now, the glee clubs that are in these high schools; do you think they would be willing to provide transportation for themselves to come to the local studio for the purpose of broadcasting during the day hours; the school hours?—A. They usually are. Unsually the parents of the children are well minded people giving the services of their cars to these schools. This is true of musical conferences, conventions and demonstrations, as well as athletic events.

Q. The Vested Choir of Columbia College has been afforded the facilities of the local Station WKBB to your knowledge, have they not?—A. I think so; yes, sir.

Q. Was there a hook-up Monsignor, with the local station in broadcasting the services that were conducted on the last Sunday morning of Music Week, from the Gymnasium two years ago when it was held?—A. I wouldn't recall. I have always tried to get a hook-up and always had them, whether it was the local

station or Davenport and Waterloo station. We used these also. Now whether the local station broadcasted, I rather think they did broadcast the last music week.

Q. Do you recall in the fall, immediately preceding the election in 1934, the appearance of the late Senator Murphy, Governor Herring, and Lieutenant Governor Krashel at a rally that was held in the College Gymnasium; that there was a local hook-up at that time?—A. I believe there was.

Q. And when I say "a local hook-up," I mean by the local Station, WKBB.—A. Yes, there was. We have also used the facilities of the local station for our athletic events; basketball, tournaments, the games themselves were not broadcast play by play, but they took the scores from our publicity director at our Gymnasium, Clark and Columbia, and would give them over the air at certain intervals, as people all over town were awaiting that information. We use those facilities in order to enlarge the evening crowds. The larger the crowd the better the game, and the better the game the larger the crowd; it works two ways.

331 Q. There was a time when the local station signed off at nine o'clock.—A. Yes; nine o'clock on week days, and Sunday afternoon I believe at one or two; something like that.

Q. Now do you understand now, Monsignor Wolfe, that the hour of signing off is eleven p. m.; the time has been extended?—A. I knew the time had been extended. Whether it was eleven p. m., or ten, I didn't have that definitely.

Q. Do you know, Monsignor, whether the facilities of the local station have been utilized in broadcasting the football games played at Columbia?—A. Yes.

Q. They have, have they not?—A. Yes.

Q. From the field?—A. Yes; and basketball games also.

Q. And that is all gratis, is it not?—A. There might be some wire charge, that is a general consideration made with everyone, that the telephone wire be connected up.

Q. Now, all of the basketball games; that is, the games played at Columbia College, where other colleges come here; those games are always in the evening, are they not?—A. Yes.

Q. Do you consider, Monsignor, that the extended time of two hours; that is, up until eleven o'clock in the evening, increases the facilities of the station?—A. Yes.

Q. For evening performances?—A. Yes, because these events run rather late sometimes.

Q. And what would you say, Monsignor, from your experience in utilizing the radio for broadcasting talks, when would you deem, or what would you deem the best hour in order to get the

greatest number of listeners in the home?—A. Well, I would think educational institutions find that around the noon hour is the best time. People are at home; mothers are taking a rest, listening in. Child care, child education, and child nature talks are usually given then. Entertaining talk, also instructive for children and parents, between four and six. Talks for men; whatever the content of the talks; may be usually after supper. Those are the general lines I think, that they usually follow.

Q. Have you been offered the facilities of the proposed station for the noon hours?—A. Have I?

Q. Just read the question. (Question read by Reporter.)—A. I wouldn't say definitely. It has offered practically any
332 hours that the station would broadcast. The definite hours would be determined by the program director or whatever you would call him, at the station, who would naturally want programs of that type, educational and relating to the home and child care around the noon hour.

Q. State whether or not, Monsignor, you know if there are any educational programs on the air coming into this locality from stations now serving this locality, and not confining it to WKBB, but taken into consideration Ames and WMT?—A. Iowa City.

Q. Waterloo, and WHO Des Moines, and WSUI, at Iowa City.—A. Yes. You asked regarding noon hour programs?

Q. Yes.—A. Yes, and from my observation regarding the time they select; they select programs—this happens to be those I am interested in—Dr. Stodard's, that I am interested in at Iowa City, they use the noon hour.

Q. And he deals with a subject and presents a subject that is worthy?—A. Oh, my yes! The best in the United States.

Q. And that comes into this community with good reception?—A. Yes.

Q. Monsignor, you referred to talent—at least I think you did; I may be in error—talent in the elementary schools under your jurisdiction in a radius in Iowa within forty miles of Dubuque, is that correct?—A. Yes.

Q. That might be available for broadcasting. Now what is the character of the talent that you refer to?—A. It might be a children's orchestra, bands, I suppose the children's choirs; boys choirs; orchestra, bands, and boys choirs.

Q. Do you consider that talent sufficiently advanced to attract a large radio audience outside of those that might be especially acquainted with them or related to them?—A. Well, I imagine the interest wouldn't be as wide as it would be for other types of broadcast. It would limit itself to a certain extent to the

area in which you would get publicity; that is, the homes of these children and their friends and so on. There would be others listening in, but they wouldn't be drawn to it as they would to other more momentous programs.

Q. Yes; that is what I understood. Now Monsignor Wolfe, you said that the hope was expressed by the representatives
333 of the Applicant, the Telegraph Herald, that their—they would later secure a permit to extend the service into the night hours, as well as the day?—A. I was under the impression that as soon as the organization would justify that movement, it would be taken.

Q. Now who informed you of that? You had your conversations, as I understand it, with Mr. Kane and Mr. Kane is the Manager of the Telegraph Herald?—A. I think he is Business Manager. I think Mr. Arndt left me under that impression. It wasn't discussed at any length; it was just mentioned.

Q. Mr. Arndt is associated with the Telegraph Herald?—A. Yes.

Q. Would you deem the evening hours necessary in order to give adequate service in this community over a radio?—A. I would; taking "adequate" in its formal sense.

Q. If the community were to be served by that particular station?—A. I would.

Q. I think that is all.

Redirect examination by Mr. Lovett:

Q. Monsignor Wolfe, how frequently has the Vested Choir broadcast over the local station?—A. I am not in a position to state that. It has been rather rare; I wouldn't say it was the local station's fault, or lack of cooperation—leave the word "fault" out—any more than it would be the Vested Choir's preparing for other distinct concerts, and has not been so much interested in broadcasts.

Q. It would be more interested if they could broadcast from their own studio?—A. Yes; I think it would, as it is rather difficult to transport so many and have them all present at a particular time.

Q. A great deal has been said about a convention that was held here last August. Will you state whether or not the Telegraph Herald gave any publicity to that convention, and if so the extent of it?

Mr. Gillodon. Now, just a moment; we object to that as incompetent, irrelevant and immaterial to any inquiry here. Your answer may follow the objection.

A. I believe the Telegraph Herald has always given me the facilities of a special reporter to be present to accept manuscripts

334 and to help me in general to secure the best facilities for publicity. My personal impression, which has been intensified by reports from others, is that we have secured exceptional publicity through the Telegraph Herald.

Q. And that has all been freely given?—A. Yes.

Q. That is all.

Rt. Rev. Mon. J. M. WOLFE,
Witness.

Sister MARY CARLOS, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Your name and address?—A. Sister Mary Carlos, Principal Immaculate Conception Academy, Dubuque, Iowa.

Q. Sister, will you state just what is the Immaculate Conception Academy, and the area from which it draws the students?—A. The Immaculate Conception Academy is a day school, and also a boarding school, for girls. Would you like the courses we have?

Q. Yes; if you will.—A. It is an academic course. We also give work in music, art, domestic science. Is that all—and, of course, the usual amount of athletics. We stress, I think possibly more than any other, the development of character, to build desirable young women. We draw our students, at least ninety percent or possibly better, within an area of fifty miles.

Mr. GILLOON. Fifty?

A. Fifty, I suppose.

Q. Sister, are you familiar in a general way with the plans of the Telegraph Herald to establish a radio station in Dubuque to serve this general area?—A. I think I am.

Q. Will you state to what extent you would be desirous to use the facilities of this proposed station in connection with your school work?—A. We would be willing to devote a period, I suppose each week; at least I think each week would be satisfactory; and we would give programs from our musical department and our orchestra and glee club, vocal selections and piano selections, and other selections over this; plays and skits
335 from the dramatic department; talks and lectures, I suppose from the other departments; debates and panel discussions from the English Department. Possibly not the English department; any other department might take that in. The English Department would handle that, but it might be better not to say "the English Department," because some other depart-

ment might want to put on a debate or a panel discussion as well as the English.

Q. Would you also be interested in using the proposed facilities for special broadcasts from the academy?—A. I think we would.

Q. Have the facilities of any existing station been offered to you freely for this particular purpose that you have been mentioning?—A. I wouldn't say "freely." We have had, of course, offers, but not anything like this: not any offer of this kind at all.

Q. And you believe this type of broadcast would be helpful in the furtherance of the work of your Academy?—A. I believe it would be beneficial to both the students and the school.

Q. That is all, Mr. Gilloon.

Cross-examination by Mr. GILLOON:

Q. Sister, you made reference to the fact that the facilities of the local station, WKBB have been offered to you: but the offer wasn't as extensive and as inclusive as this offer. Now, I think that is in substance, I think, your last answer?—A. Well, I don't know whether I am just exactly correct. We have the opportunity to go down there, but we have to ask for a special time to broadcast over theirs; they have never come up and asked us to take a special period over their station.

Q. But you have always understood that you might request, or inquire as to time available?—A. Yes, I think we could do that. Of course, we never have made use of the station because—well, I think largely the reason was the girls didn't like the studio from which they had to broadcast; they didn't think it did justice to the work they were doing for music; for speaking I think it was satisfactory.

Q. Did they ever utilize it?—A. Yes; during Catholic Action Week we used it.

336 Q. What is that?—A. Yes; during Catholic Action Week they were called upon.

Q. Your students from your academy?—A. Yes; and they didn't think the work as it came over the radio did justice to the—there were several different instruments used, and they didn't believe they came over as clear as they should.

Q. I think I will move to strike out the answer as necessarily predicated on hearsay. These remarks came from the students rendering the selection?—A. Well, and those in the school who had heard them give it at the school.

Q. Did you hear it yourself?—A. Yes. We weren't quite satisfied.

Q. What radio were you employing over which to get the reception?—A. I think it is a Temple, yes; and what is the

other sound radio we have? We have another radio; I really don't know what the make of it is.

Q. How old are those radios?—A. Well, I suppose our Temple radio is eight years; the other one is not as old as that, but I don't know how old it is.

Q. Do you frequently tune in and listen to WKBB?—A. Not very much.

Q. Not very much?—A. No.

Q. How frequently?—A. We may get the news flashes, but other than that I don't think we tune in for hardly anything except just to see what is coming over, but not keep it on.

Q. Do you ever employ that station for musical programs? Listen to them, I mean, as a listener?—A. No, not very often, I believe, except as they are relayed from other stations.

Q. You have not listened to the Chicago Symphony Orchestra broadcast at eight o'clock in the evening from that station?—A. I think not.

Q. You are not familiar with the fact that they have this musical hour between eight and nine, or seven to eight in the evening?—A. Well, I don't know; you see they haven't had that excepting during the spring.

Q. All summer.—A. And of course, we are not in the house during the day.

Q. Now these facilities that have been offered to you by this proposed station of the Telegraph Herald; just what
337 are those facilities that you understand have been offered to you?—A. Well, we are to have the use of their station thirty minutes per week for any type of educational program that we are able or willing to prepare for that week, and then for special occasions they are also willing to give us time, and I believe if I understood it correctly, if the program is worthwhile, to run a line out to the school to get the program over their station.

Q. Now what would you consider a "worthwhile program" that would warrant the extension of a wire from the school?—A. I haven't had time to think about that; it was just presented to me a few minutes ago, and I really haven't given the programs thought enough to be able to answer on that.

Q. Now as I understand it, the children that attend the Immaculate Conception Academy are of high school age?—A. Yes; we have four years of high school for girls.

Q. Ranging from 14 to 18?—A. Well, I would say 13 to 18; the majority, of course, being about 14 to 17.

Q. Do you have a commercial department?—A. We do.

Q. And what is the average yearly attendance of the whole school?—A. Well, I should say 175; about 165 to 188, is the

highest we have had; but I would think an average of about 175.

Q. Now what percentage of those children would be in the Commercial Department availing themselves of that branch?—A. Would you want that in numbers?

Q. Well, numbers or percentage. Numbers is all right, Sister.—A. I would say 35 to 40 per cent.

Q. Of the 175?—A. We do not offer it until third and fourth year, you see for that reason.

Q. Oh, the third and fourth high school year those students participate in the Commercial Department, and prior to that they do not?—A. Prior to that they are preparing to make themselves fit for the Commercial Department.

Q. Well, if I may ask, approximately what percentage of the attendance belong to the junior and senior classes?—A. Last year we had 187 students and 75 of those were in third and fourth year.

Q. And you graduate between thirty-five and forty annually?—A. To be very accurate, between thirty-two and forty.

338 Q. Now, approximately how many students do you have in the Academy taking music; taking music to the extent, and advanced sufficiently that you think they would be qualified to offer a rendition over the air?—A. Would that include glee club and orchestra and the instrumental?

Q. Well, in this question I was confining it more to the instruments—piano.—A. Well, you must understand that our Music Department is more than highschool students. You see, we have many taking music who do not attend the school. There are some younger than highschool age and there are some who have finished highschool. I wouldn't be able to answer that accurately because I don't check up on the number of music students, but the glee club and orchestras, I could give you that.

Q. Now, the 90 per cent of the students in attendence that are attracted——A. Within an area of fifty miles of Dubuque.

Q. ——what portion of that 90 per cent are local?—A. Eighty-five.

Q. Between eighty-five and the ninety?—A. Yes; I think about five per cent would be around from the close country district and Wisconsin and Illinois.

Q. And the other ten per cent would be from a greater distance than fifty miles is that the way you are dividing it up?—A. I think so farther away in the State, or out of the state.

Q. Do you recall, Sister, the instruments that were being used by these particular students that appeared at WKBB Studio?—A. Cornet——

Q. And that the listeners thought the reception was not so good?—A. Cornet, xylophone, and piano; and of course, it is the piano that is the worst; that doesn't come over as it should.

Q. Do you know the piano that is employed at the studio?—A. No, sir; I don't.

Q. Used in broadcasting musical recitals?—A. No; I don't.

Q. Are you familiar with the Charles Frederick Stein instrument, piano?

MR. LOVETT. I object to this as entirely incompetent, irrelevant, and immaterial; Mr. Gilloon, I wonder if we can't get down to something material?—A. The Stein Piano is good.

339 Q. I beg your pardon?—A. It is considered a good piano. But, I don't know anything about theirs.

Q. How far advanced was the particular student that was using the piano?—A. She was within one year of completing the course—the graduate course.

Q. What is the course?—A. Graduate. You will have to get a music teacher to tell you that. I don't know; but it is quite an advanced course.

Q. I think that is all.

MR. LOVETT. That is all, Sister Carlos.

Sister MARY CARLOS,
Witness.

Mr. EARL D. CLINE, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your name and address and occupation.—A. Earl D. Cline, Superintendent of Schools of the city of Dubuque, Dubuque, Iowa.

Q. Mr. Cline, are you familiar with the fact that the Telegraph Herald is planning to establish a radio station to serve Dubuque and this immediate vicinity?—A. I have been so informed; yes.

Q. Can you state from your knowledge what the attitude of the Telegraph Herald has been toward the educational program in Dubuque?—A. Well, I found the attitude of the Telegraph Herald to be very favorable toward the schools; and they have been willing to give us any space for publicity or announcements or anything of that kind that we have ever asked for.

Q. What extent is the Dubuque school system—what does it comprise?—A. Well, we have nine elementary, including the kindergarten to sixth grade; two junior high schools including grades 7, 8, and 9; one Senior high school including grades 10,

11, and 12; and one special school and office building; making thirteen buildings in all, with an approximate enrollment each year of five thousand pupils.

Q. Now, if the Telegraph Herald be successful in its ef-
340 forts to establish this station, and its facilities be freely offered to you, in what way and to what extent would you make use of it?—A. Well, we would be willing to cooperate in any way possible with the station, using the facilities as we feel we could to any extent that they would be willing to let us use the facilities to broadcast our various departments of the school, either Parent-Teacher, or Music, or Dramatics, or any announcements or such like.

Q. Do you have many musical groups in your school system?—A. Yes; we have musical groups, not only in the elementary, but in the Junior and High Schools; bands and orchestras and such like.

Q. Are there special occasions on which the use of the facilities of the radio station might be of value to you?—A. Well, we have been using the facilities of the present broadcasting station for Parent-Teachers education work, and also for the American Education Week, which is usually the second week in November; but that would be continued or duplicated with any other new station.

Q. Are there occasions when commencement exercises or special addresses which you feel it would be beneficial to broadcast?—A. The schools as a rule have some talent enter the city during the year, and we would be very glad to have that talent used in any way it could be used by the stations.

Q. That is all, Mr. Gilloon.

Cross-examination by Mr. Gilloon:

Q. You have made use of the local station, Mr. Cline, WKBB?—A. Yes; they have been very cooperative whenever we ask for the use of facilities; although we haven't had a regular set-up, that is, for example, once a week or once every two weeks.

Q. You have never asked for that cooperation? You have never given them a plan or a schedule that you would supply for their programs?—A. No.

Q. Do you know Mrs. French of the Parent-Teacher Association?—A. Mrs. Raymond French?

Q. Yes.—A. Yes.

Q. Do you know whether or not she has been broadcasting regularly for the Parent-Teachers Association over WKBB?—
A. Yes. She gave a series of broadcasts on par-
341 ent education; I think it was six or eight weeks, or something like that; I have forgotten the exact length of time.

Q. Have you, yourself, ever talked over WKBB?—A. Yes; I have.

Q. In connection with your school work?—A. In connection with parent-teachers work, I think it is what they call Foundation Week. I believe it was in March, for the Parent-Teachers Association I gave one talk over there.

Q. You have always understood that the facilities of the local station were available to the public and to the schools?—A. I have; yes.

Q. You have a local Civic Music Association in the schools that is of the teacher membership?—A. That must be the Dubuque Teachers Association. You don't mean "Civic Music Association"; the Civic Music Association is independent.

Q. I beg your pardon. The musician I had in mind was Professor Kleine; not the synthetic [laughing].—A. I will take that (laughing).

Q. Do you know, Mr. Cline, whether or not any of the local students in the public schools who have exceptional accomplishments along musical lines, have ever appeared over the local station?—A. No.

Q. You don't know of your own knowledge?—A. I don't know, Mr. Gilloon; the High School has the facilities and would have a record of it, and would know about it.

Q. That would be under Mr. Johnston?—A. Yes. They would know. I do know they have—I believe it is a kindergarten rythm band broadcast over the local station once. But I don't know about those things. They don't clear through my office, so I wouldn't know.

Q. I think that's all.—A. All right.

E. D. CLINE, *Witness.*

Mr. A. C. KLEINE, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your name and address and occupation, please.—A. Professor A. C. Kleine; I am Director of the Dubuque Academy of Music, Dubuque, Iowa.

342 Q. Mr. Kleine, will you tell us what is the Dubuque Academy of Music?—A. The Academy was founded in the year 1880 by two ladies who had studied at the Leipzig Conservatory. The school was founded on the highest ideals in the art of pianoforte playing. I took the Academy in the year 1890. Do you want something about the teachers?

Q. Yes, if you would.—A. My wife was a graduate of the Dresden Schools, Germany. She has been my assistant with six other teachers. We specialize pianoforte, only. Would you care for the names of the faculty of my teachers?

Q. You might state from where you draw your students and the accomplishments of some of your students and faculty members if you will, please.—A. Well, a number of the important dates that were given were these: Martha Zehetner played with the St. Paul Symphony; Aida Campbell played with the Minneapolis Symphony; Joseph Brinkman was the prize winner in Chicago, who played with the Thomas Orchestra; Marie Wardell is one of my very prominent players.

Q. These are all former students that you are mentioning?—A. yes; and these were all teachers, excepting Marie Wardell. Miss Edith Groff and Martha Zehetner do pianoforte work; excel/ in that; and I have an ensemble class for two pianos—eight hands, that could be used.

Q. From what area do the majority of your students come. Professor Kleine?—A. Well, I have had students from Galena, Guttenberg, and Bellevue, Sabula, and Savanna, Illinois.

Q. Are quite a majority of them from a radius of thirty or forty miles?—A. And Manchester.

Q. Professor Kleine, are you familiar with the plans in general of the Telegraph-Herald to establish a station in Dubuque to serve this general area?—A. Yes; I am.

Q. First, will you tell us, if you can of your own knowledge, the attitude of the Telegraph Herald toward the Academy and toward classical music in general?—A. I feel that the attitude of the Telegraph-Herald is one that would pronounce the educational side of music. We have very much good talent in the city and it should be an easy matter to handle this situation from a musical standpoint as a benefit to the community at large.

343 Q. Professor, will you state to what extent and what way the use to the Academy would be desirous of utilizing the radio facilities proposed by the Telegraph-Herald?—A. Well, I feel we would get in closer touch with a great many of the families, and a great many of the parents in broadcasting programs. I think sometimes our neighbors are not very cognizant of what we are doing; but from the radio you can enter recesses that you could not touch otherwise.

Q. What type of program do you propose to present over this proposed Telegraph-Herald Station?—A. Entirely the classical side; from the earliest time in pianoforte playing to the present hour.

Q. Are you prepared to present a program regularly over this station?—A. Yes, weekly; I believe we could present programs of a half hour.

Q. Of what nature? Could you illustrate just one program which might be broadcast over that half-hour period. or any series of broadcasts?—A. Yes. I think I could give you a better idea in this way: we could begin with the old school, like the older artists like Scarlotti, Rameau, and the different Bachs. I might carry out a program on that, you understand, and then move along the line of the composers, passing through the entire history of music that is devoted to the piano largely, up to the present time. We would have the romantic school and the modern compositions; compositions of the present hour. You see? The three: Classic, romantic, and modern.

Q. And in addition to this type of musical and historical development, you would present classical programs which would be complete in themselves?—A. Yes. The best works of the best Masters; along the line of composition, you understand; from the earliest stages of the pianoforte up to the present hour.

Q. You would propose to make explanatory remarks?—A. Remarks with reference to the compositions and with reference to the period and the time in which they were written.

Q. Have any of the facilities of any radio station been offered to you for this particular type of broadcast in the past?—A. No; they have not.

Q. That is all, Mr. Gilloon. * * * I might ask one other question right here. In addition to the talent available in
344 your academy for classical programs of the type that you mentioned——A. Yes?

Q.——do you know of any other such talent which would be available in this community in this general area for that purpose?—A. Are you referring to the piano alone, or artists in general?

Q. I was thinking particularly of the classical.—A. Well, there would be the teachers I am acquainted with, our Professor Alfred Manger, violinist; Professor Edward Schroeder; I think I saw him here a little while ago, violinist; and the vocal teachers would be Professor Logan of the University of Dubuque; Father Kelly, Columbia; those are Dubuque people. I don't know who is doing the vocal work up at the Senior High.

Q. Are there many of your former students that would be available?—A. What do you mean; as teachers?

Q. No; for broadcasting classical programs.

Mr. GILLOON. We object to that as calling for an incompetent conclusion of the witness.—A. What was that?

Q. Go right ahead.—A. We have—well, there is Miss McCaffrey, is a very good teacher; Doris McCaffery. Miss Kamm; most of these young people, you know they get away, and get away from me. Do you want some from outside the city?

Q. Well, I mean from your own knowledge, the talent that is available here for programs of a classical nature.—A. I know that Miss McCaffrey was taught a great deal. She knows a lot more than some of the others. Miss Florence Lally who used to be here passed away recently.

Q. Do you know of your own knowledge that there is interest in music of the better sort here in the Dubuque area?—A. Oh, I think there certainly is, I feel, of course, it has suffered some through the times, but I believe these recitals over the radio would be quite a stimulus; but, all the schools have suffered on account of all of the terrible conditions that we all know about. There is a vast difference today from the past. I can say that we are just about one-half as large as we were a good many years ago.

Q. You feel this program you suggested would be helpful in bringing things back to normal?—A. It would. Yes, I believe it would.

345 Cross-examination by Mr. GILLOON:

Q. Professor, utilizing these proposed facilities of this proposed station in the manner that you have suggested, do you contemplate the artists rendering the programs from the studio of the proposed station?—A. Yes, sir; I do.

Q. Not from your Academy?—A. No, no.

Q. Have you ever utilized the facilities of the local broadcasting station, WKBB?—A. No, I never have. Some of my pupils have played there at different times, but I have never been in any connection——

Q. Yourself?—A. ——with it myself.

Q. Do you know the names of some of the pupils that have played?—A. Yes; Norman Fettgather; I think Marie Wardell. I don't know whether the ladies have played their two pianoforte work or not. I know they have in other cities. Mrs. Groff and Miss Zehetner.

Q. Mr. Fettgather and Collins very accomplished?—A. They are very gifted. They are very far advanced.

Q. You have talked over the station, have you not, Professor?—A. Yes, I was called on—oh, some time ago. About a month ago I believe, that I was asked to give a little address. It is so long ago I have actually forgotten what it was about.

Q. Well, was that in the inauguration of the musical program?—A. I think it was in reference to—well, I don't recall it;

I think it was something with reference to musical conditions, or I believe it was with reference to the Civic Music Association, but I am not certain.

Q. Are you aware of the fact that a portion of the broadcasting time of the local station between the hour of seven and eight o'clock in the evening is devoted to the program that is rendered in Chicago, including the Women's Symphony Orchestra?—A. Yes.

Q. And Chicago Philharmonic Orchestra?—A. Yes.

Q. Presented in Grant Park, Chicago?—A. Yes.

Q. That carries all of the better talent of Chicago, does it not?—A. Yes.

Q. I believe you sent out a circular letter to the Civic Music Association some time ago incorporating the August
346 and September programs?—A. Yes. Yes; this was in connection with the Illinois Central; they came and asked us for the addresses of the members of——

Q. Well, I particularly refer to the program on those.—A. Yes.

Q. During the month of August and part of September, that you set out here.—A. Now in what way do you refer to this?

Q. Well, I call your attention to the program——A. Well, those are——

Q. Now, I will ask you in regard to it. I wanted you to have this program in mind. You are President of the Civic Music Association?—A. Yes, sir.

Q. Now, do you know, Professor, that this program has been and is being broadcast by WKBB, the local station?—A. Yes.

Q. Between the hours of seven and seven-thirty each evening, direct from Chicago?—A. Well, I have not listened in much on those things. I can't do it myself; it is too hard on me.

Q. Well now, the rendition of a program of that kind over the local station——A. Yes?

Q. ——so that the listeners of the local station might enjoy it; that would be considered high-class musical education, would it not?—A. Well, most of it there is good; some better than the other.

Q. Well, you thought at the time that you suggested, or called it to the attention of the members of the Civic Music Association to the fact that they might avail themselves of the services of the railroad in going to Chicago; that it might be worth while?—A. Yes, that it might be worth while; there have been quite a few——

Q. In going over and attending the services in Chicago?—A. Yes.

Q. Well, I ask you that because of your superior place in the field of music. These artists and programs are considered worthwhile programs?—A. They are very good.

Q. Did you some weeks ago conduct what might be termed the Dubuque Music Week, by the Dubuque Civic Music Association in Dubuque?—A. Not in the Dubuque Academy of Music. We always present——

347 Q. Well, might I ask now, is the Dubuque Civic Music Association made up of those associated with the Dubuque Academy of Music or are they from on the outside?—A. No; that is open to anyone.

Q. Well, my inquiry was, did the Dubuque Civic Music Association some time ago, within the past month or six weeks——A. Yes.

Q. Conduct what they termed a Music Week in the city?—A. No.

Q. Did you at any time during the summer?—A. Not during the summer; not the Civic Music; the last concert that was given that had any connection with the Civic Music Association was given by the Women's Club, and that was up at the Senior High-school.

Q. Oh, maybe I am in error on this. Did the Dubuque Civic Music Association conduct a drive for memberships?—A. Yes.

Q. During the summer?—A. Yes.

Q. And I will ask you to state if you know whether or not the committee in charge in sponsoring that drive, were afforded the facilities of WKBB for speakers?—A. No, we have not had any; no, nothing whatever.

Q. Do you mean that the speakers did not speak over the local radio in connection with that?—A. Never. Perhaps there was something came in there when I had a few words—I think that is what it was, with reference to the Dubuque Civic Music Association. I think I was called on suddenly and asked if I wouldn't come in; and that was with reference to the Civic Music Association; but we have had no help at all on that.

Q. Did you have a man from out of town come in?—A. Yes; Mr. Cornetet came in.

Q. Now, is it not a fact that Mr. Wright did employ the facilities of the station in speaking on the subject?—A. Oh, yes; that comes to my mind; I think he did. Yes, he did. They carried this thing on so much alone. Yes, I recall now that he got the assistance of the radio.

Q. Now, I think I am asking you about Mr. Wright using the facilities of the station; I might have said "employed the services of the facilities"?—A. Yes.

348 Q. May I ask you now whether or not there was a charge made, or whether that service was gratis?—A. I think not. I am quite sure it was gratis.

Q. The point I am getting at is, whether the local station cooperated.—A. Yes.

Q. In the drive to that extent?—A. Yes.

Q. By giving to this Association this opportunity?—A. Yes, I am pretty sure of that, because my secretary would have notified me. You know, we select our talent always according to our budget. We have made our drive and we know.

Q. Your paid talent?—A. Yes; we select that according to our budget.

Q. In speaking of that; now, is it your notion that these ones that you have mentioned here, these accomplished musicians, would render their services free of charge to the broadcasting station, or would they expect pay for it?—A. Well, I don't think the younger people might think of anything like that, but the Professors might, but I don't think so. I think any of them would cooperate, especially the first year I think they would all be glad to cooperate.

Q. Do you know any reason why they wouldn't be willing to cooperate on these programs with the local station, WKBB?—A. No, I couldn't speak for that.

Q. Well, do you know any reason why they shouldn't? Why they should give preference to the Telegraph Herald's proposed station?—A. Well, it would seem to me that it would be of greater advantage, wouldn't it, for anyone to be in connection with the paper?

Q. From what standpoint?—A. Well, it would seem to me that the newspaper could give you some advertisement on the program. You know—something on what the program is going to be; something that is a little harder to get if on the radio when in a small center like this which would be quite independent.

Q. You would conclude unless the paper had a station of it's own it would not cooperate sufficiently with a station over which it had no control?—A. Well, I guess——

Q. You would get the same result of the same amount of advertisement?

MR. LOVETT. I object to that as asking for a conclusion of the witness.

349 Q. The facilities of the local station have never been denied you, Professor?—A. No.

Q. Joseph Brinkman; what shall we call him, he has made that his life's business?—A. He has made that his profession; he is teaching at Ann Arbor now. I had him up to his thirteenth year.

Q. He would not be available here excepting on special occasions, and you would expect that he would be compensated?—A. Oh, yes. Yes. He played on the Civic Music Association last year.

Q. Is Miss Wardell on your teaching staff?—A. No; not on the teaching staff.

Q. Where is she?—A. She lives here in the city. Do you want her address?

Q. Oh no, not particularly, just Dubuque?—A. Dubulque, Iowa.

Q. Does she follow music as a profession?—A. Yes.

Q. Does she teach?—A. Yes, she teaches. She is very gifted—very gifted.

Q. She plays for a consideration?—A. Yes.

Q. And do you mean now that your own services would be available over the year?—A. Yes, sir.

Q. And do you contemplate that those services would be gratis or for a consideration?—A. Gratis.

Q. Gratis?—A. Yes.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. Professor Kleine, you intimated that some of your students had broadcasted over the East Dubuque Station? Were those broadcasts under the auspices of the Dubuque Academy of Music?—A. No, never. They were just called upon this once at different times to take part in different programs. I knew they had played. I have heard some of them play over the radio—several of them—young Collins and Fettgather.

Q. That is all.

350 Recross-examination by Mr. GILLOON:

Q. Does he use the piano?—A. Sir?

Q. Does he use the piano?—A. The piano only.

Q. And how did the reception seem to be and the rendition?—A. Well, it came to us very good. It was very good.

Q. That is all.

H. C. KLEINE,
Witness.

EDWARD J. SCHROEDER, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. State your full name and residence and occupation.—A. Edward J. Schroeder, Dubuque. Director of the Schroeder Violin Conservatory.

Q. Professor Schroeder, will you tell us just what the Schroeder Violin Conservatory is?—A. In what way have you—in what way do you mean? Well we are—the idea is to educate a violinist for the radio, concert field, or orchestra field.

Q. It is limited to the violin?—A. No; the violin and cello.

Q. Do you do all of the instructing yourself, or do you have other instructors also?—A. I have other instructors.

Q. How many?—A. One.

Q. From what area do you draw the majority of your students; I mean in miles, 30 or 40 miles?—A. Well, there is some come from as high as 80 miles, 40 or 50.

Q. The majority of them are from——A. The majority of them are from this locality; all these small towns; there is always a lot of pupils coming into study.

Q. Are you familiar with the plans generally of the Telegraph Herald to establish a radio station to serve this general area?—A. Well, I was just talking to the gentleman about this; what they were telling me they would put up this station, and it is from an educational standpoint, the way I understand it, to bring out the musical and educational side of this community.

351 Q. Can you state of your own knowledge what the attitude of the Telegraph Herald has been in its columns toward music and musical education?—A. They have been very fine—very fine.

Q. If they be successful in their efforts to establish this station, would you and your Conservatory be desirous of cooperating with them in the broadcasting of programs of the better type?—A. Well, now, I think I would be able to do something along that line. I have never done anything myself along that line in radio except a few symphony orchestra broadcasting a few times over the Dubuque station we have here; outside of that myself personally I have done nothing.

Q. The Conservatory as such hasn't had a regular program over the broadcasting station?—A. Now, do you mean some of the pupils that came from the Conservatory?

Q. No; I mean there hasn't been a Conservatory period?—A. No; the Conservatory has had no period. Yes; I will say that the two boys and Mrs. have given some programs over the station.

Q. Would you be interested and willing to put on a regular program over the proposed Telegraph Herald station under the auspices of the Conservatory?—A. Well, this is the first time I have been approached along that line to give a regular program of any kind.

Q. Well, would you be interested if the facilities were made available to you?—A. Yes. I think I would.

Q. For, say 30 minutes a week?—A. I think I would. I would be willing to put on a program. I would have to see how it could all be done.

Q. You have quartettes and soloists?—A. Quartettes and soloists and various combinations.

Q. And various combinations?—A. Yes.

Q. All of which would be available for such a program?—A. Yes. We could arrange something like that. Just as I say, I have never been approached along that line and now it is coming I would have to see what I could do.

Q. Would you be definitely interested in doing that?—A. I would.

Q. Do you think that would further the interests of your Conservatory and be beneficial to the progress of your students?—A. I think it would.

Q. I think that is all, Mr. Gilloon.

352 Cross-examination by Mr. GILLOON:

Q. Would you be willing to cooperate in the same way with the present station, WKBB?—A. I think so. I don't see why not.

Q. If the opportunity were afforded, why you would be willing to work up a program or at least consider the working up of one—give thought to it?—A. I would perhaps give thought to it.

Q. Well, that is what you would do with the proposed station; you haven't thought the matter out yet?—A. Yes. Yes. You see, I was just approached on the situation. I was never approached before.

Q. You have never done it?—A. I have never done it.

Q. Have you ever appeared over the local station WKBB?—A. The only time I did was when they inaugurated that WABC and affiliated station.

Q. That is a chain network over the present station?—A. Over the present station; yes.

Q. You did appear at that time?—A. I did. I gave a little talk.

Q. Would your orchestra appear over the air from Columbia College through remote control?—A. It would. I think that was remote control, there, at Music Week.

Q. Yes?—A. Yes.

Q. Your son is a composer?—A. He is. Yes, sir.

Q. He and his brother and Mrs. Schroeder have appeared on the air?—A. Yes, sir. Yes.

Q. Over WKBB?—A. Yes, sir.

Q. You always understood that WKBB facilities were open to you?—A. Well, I don't know—I never asked in any way or was approached.

Q. Well, you never felt——A. I never felt?

Q. You never felt that that would be denied to you?—A. What was that?

Q. That they would be denied to you?—A. Well, I don't know. I didn't think they would be denied me.

Q. They have never been refused you?—A. No. I have never asked them and I have never had occasion to be refused.

353 Q. Are you familiar with the program over WKBB that has been running this summer carrying the concerts from Grant Park, Chicago?—A. Yes, sir.

Q. You have listened to those, have you, between the hours of 7 and 8?—A. Yes, sir.

Q. You consider that a worthy class of music for the listeners?—A. Very fine. Very fine.

Q. What is the extent of your teaching staff?—A. We have one extra teacher at the present time.

Q. And yourself?—A. And myself; yes, sir.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. Professor Schroeder, did you teach at any educational institutions here?—A. At Columbia College.

Q. At Columbia College?—A. Yes, sir.

Q. Can you state what some of your students have done in a musical way after they left the Conservatory?—A. Well I will say this: I have had four graduates that I think it was a year ago or two years ago that appeared as the outstanding pupils of three of our universities and one of our colleges. Outstanding pupils, two of them did all of the radio work for them—announcing like that the Chicago Symphony was coming from Cornell College. That young lady was a very fine student. Mr. Stock spoke of her, director of the Chicago Symphony, and he complimented her very highly on her work. I have those letters myself—personal letters, and there is a lot of pupils have been playing. Now there is another pupil is playing over the radio doing the work at Atlanta, Georgia, for a long period. It is very interesting to me to see how when the students go away like that what they accomplish in places like that, and you know it is very gratifying to Dubuque as a musical center. Now the boy, he is doing very well and he was offered a musical scholarship at the University of Iowa, and right now he is out on the

coast and I want him to accept this and go ahead because I think he is a very talented and gifted fellow.

Q. That is all.

EDWARD J. SCHROEDER,
Witness.

354 JOSEPH FLYNN, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Mr. Flynn, if you will please give your name, residence, and occupation?—A. County Superintendent of Schools of Dubuque County.

Q. Mr. Flynn, are you familiar in a general way with the plans of the Telegraph-Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes.

Q. Can you state what the attitude of the Telegraph Herald as a newspaper has been toward education in this county?—A. It has always been very agreeable.

Q. They have cooperated with you in every way which you have suggested?—A. Well, yes; they have always treated us civilly and even gone further to publish notices about school. We get out a weekly bulletin—it averages about every ten days, I guess. They always take the matter out of that and publish it.

Q. You have found them very helpful so far as your activities are concerned?—A. Yes.

Q. How extensive is your school system?—A. It covers Dubuque County.

Q. How many schools approximately?—A. There are 107 one-room schools and then there is the towns such as Farley, Dyersville, and Luxemburg, and it goes from Cascade, Zwingle, Dyersville, Luxemburg, and Balltown on the north.

Q. Are there high schools located in most of those towns?—A. Well there is public high schools in Zwingle, Epworth, Farley, Cascade, and Peosta, and we have parochial high schools in other places. Dyersville has a parochial school, but no public high school.

Q. If the Telegraph Herald should be successful in establishing this radio station, would you utilize such facilities as might be freely offered by the station?—A. We would.

Q. To what extent and in what way would you use those facilities?—A. Well, it would be hard to determine that in advance.

355 Q. Well I mean just in a general way?—A. Well I think there is a relationship between the headlines in the

paper and the story. Now the newspaper and the broadcasting station would compliment each other. If there were no headlines, you wouldn't read any stories, and after you hear something over a broadcasting station, you would be more likely to buy a newspaper and read the details of it than if you hadn't. So we would be glad to send out some information through the air and probably also similar information through the newspaper. They would all be avenues for putting out information.

Q. It has been suggested that one day each week be devoted to each of the six counties which this proposed station is expected to reach, including, of course, Dubuque County? Would you be agreeable to participating in such a program to the extent of one program each week for Dubuque County?—A. That is have one each week?

Q. Yes.—A. Oh, I think so now. As a citizen I would like to see a 50,000 Watt station here, but as County Superintendent they wouldn't let us on that. It would be commercialized, but the question is to get out, maybe a small station would give us too much time and a great big station wouldn't give us any.

Q. You would be willing to cooperate at least to the extent of one regular weekly broadcast?—A. And what assurance would we have that they would give us that after six months or two years.

Q. If they propose to give you that, would you use it?—A. We would use it, yes.

Q. Would you utilize the facilities of the station for special broadcasts—emergency announcements, and so forth?—A. Oh, I think so, yes.

Q. Has there ever been any occasion in the past when such facilities might have been used?—A. Well, we have used the local station.

Q. And you would use the facilities of another station in a similar manner in addition to that?—A. Yes

Q. What activities, if any, in the school system would lend themselves to the broadcasting that you suggest?—A. Well, we might familiarize the parents with what is being done in
356 the school. We have two problems—now you take one down in Des Moines and they say that is political suicide to touch it, which is correct, but if you could slip out some information indirectly or get others to do it for you, it might sow the seed that might change some of these people that are entirely politically minded. Now, for instance, we have children going to school that are five years of age according to law, and a teacher came in this morning and said, "This fall I will have three children coming in four years of age." And now they don't enter the first reader until they are six years of age. Now

our problem—we want to hold children back even though they enter school at four or five, and keep them back and not permit them to enter the first reader until they are six years of age. Children coming in at five means that the average child will finish at thirteen. The child will feel superior if he finishes at twelve or eleven, so if they don't go to high school they are in a sad situation because the course of study is to meet the apprehension of an eleven-year-old pupil. My idea is to hold them back until they are six.

Q. Now how are you going to sell that idea to the parents?—A. The other problem is——

Q. You feel that a regular series of broadcasts might assist you in furthering your programs?—A. Well, if I could get Frank Gilloon to make a speech for the schools and get him to help me and say he said the same thing.

Q. You would talk over the proposed station?

Mr. GILLOON. I would be willing to do it over the present facilities.

A. Now you are signed up. I will write the speech. Now here is the other problem. On every dollar of property tax, ninety-eight cents of that is for school purposes. I mean the money that goes for school purposes is raised on a property tax, and ninety-eight cents of it is spent for schools. Now we want to get some of the gasoline tax and we want to get the liquor tax, because the people want their property tax cut, and when they do the only institution they hit is the public schools, and the State now is being supported by the sales tax, but we want to get money to support our schools on the painless tax system, and the property tax is a very painful one. Now there is my two axes I have to grind at the present time.

Q. And a regular broadcast would be helpful in carrying out your program?—A. Yes.

357 Q. Do you have other activities, music that is available for broadcasting programs?—A. Yes; we have other things too.

Q. You have illustrated some of the things in your mind. I am through. You may cross examine.

Cross-examination by Mr. GILLOON:

Q. Would you be interested in an increase of pay of teachers and county superintendents?—A. Well I think so.

Q. If it could be accomplished through a painless system of taxation?—A. Of course, that may be an ulterior motive in proposing this.

Q. Have you ever availed yourself of the local facilities—broadcasting facilities?—A. A few times; yes.

Q. And you have never been refused the local facilities in any public matter that you had?—A. No.

Q. And could not your program be carried on over the local station, WKBB?—A. Oh, I think so, but when we have used it I sent out a bulletin asking the teachers to listen in.

Q. Yes, you wanted listeners. You were not on regularly for any stated period for any series of talks?—A. No.

Q. And of course if you were over a period each Monday, we will say, why the probabilities are that that would soon become known?—A. Well then maybe because of my advising them I was going on I would be maliciously listed.

Q. Well you would have to take that chance. Maybe it is better to sneak up on them?—A. I tried to find out; to get a reaction to some of these things and some of them hadn't heard it.

Q. What hour of the day did you employ?—A. Well we tried some at 11:30 and we went on on the educational week program, I think, for three years, and that is always in November.

Q. What hour?—A. They give the schools, I think, from eight to nine during the educational week.

Q. In the morning or evening?—A. Evening during educational week, and the county schools got fifteen minutes of one day that week.

Q. In getting this message over to the taxpayer and the parent with reference to relieving the property from the
358 direct property tax for school support and the message with reference to keep the child confined to some studies outside of the first reader work, what hour do you think could best be employed in order to get that message over to the taxpayer most effectively?—A. Well I have no way of knowing, but my guess would be from 7 to 7:15 in the morning.

Q. In the morning?—A. Yes; between 7 and 8.

Q. Do you think it would be as good as the supper hour in the evening?—A. I think it would be better; that is just a guess, of course.

Q. Well this would be a rural audience that you would expect to reach?—A. Yes.

Q. I think that is all.

JOSEPH FLYNN, *Witness.*

DORIS MCCAFFREY, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Will you state your name, residence, and occupation, please?—A. Doris McCaffrey, 331 Dorgan Place, Dubuque, Iowa. Organist and teacher of piano.

Q. Miss McCaffrey, are you familiar in a general way with the plans of the Telegraph Herald to establish a radio station to serve this area?—A. Yes; it has been explained to me.

Q. If they be successful in their efforts, to what, if any, extent will you be willing and desirous of cooperating with them in producing programs of musical merit?—A. Well, in presenting pupils I probably could give a half hour every other week or something like that.

Q. What types of programs would those be?—A. Well, pupils' recitals to some extent and I might fill in myself on the organ on the other work.

Q. With explanations that you yourself might give for the compositions?—A. Perhaps.

Q. Do you think that would be of benefit to you?—A. Well, I can see possibilities for advertising and perhaps bettering the pupils' interest in the music.

359 Q. From what area do you draw most of your pupils?—A. Well I have a few country pupils from probably 10 or 15 miles out. I don't have any from out of town now.

Q. How many pupils do you average during the season?—A. Around forty.

Q. And you state you are an organist as well as an instructor?—A. I am organist at St. Patrick's.

Q. And would you be willing and able to give organ recitals over the proposed station if the facilities and the organ were furnished?—A. Oh, yes, I would.

Q. It would be special occasions upon which you would also make use of the occasion for student recitals, and so forth?—A. Well, if this is what you mean, I present my pupils in a recital anyway; I have so often anyway.

Q. I think that is all.

Cross-examination by Mr. GILLIOM:

Q. As organist at St. Patrick's Church, you make use of a pipe organ that is installed in the Church?—A. You say do I make use of it?

Q. Yes?—A. Sure.

Q. It is a pipe organ?—A. Yes. It is one of the newer styles.

Q. And you teach on the organ?—A. Well I have pupils, but I do not teach up there; I don't believe they would allow it, but I do have organ pupils, that is one of the minister's children, but that is over at the little Lutheran Church.

Q. That is on a pipe organ?—A. Uh-huh.

Q. Your piano recitals, where are they conducted?—A. I have been having them either at the Congregational Church in the parlors or else down at Renier's on the third floor in the halls up there.

Q. And in those recitals usually what audiences do you attract?—A. Well, I have big crowds because there is so many in it.

Q. Usually supported by the relatives?—A. Well, to a great extent, although I have my own friends too that are interested too.

360 Q. Have you ever appeared over the local broadcasting station?—A. No, I never have.

Q. Have you ever rendered piano music over the air yourself from any other station?—A. Yes. I have in Chicago; I did a couple of times. I am studying at the American Conservatory over there, and that is a part of your course, the broadcasting. I had here, I don't know whether it was under this station when I first came here—remember when they had it at the Grand, I accompanied quite a few on the piano, but I don't believe there was any station here at the time.

Q. That was one of those traveling broadcast stations?—A. Yes. I imagine it was because that was at the Grand, I remember.

Q. Now in explaining the plan to you, Miss McCaffrey; what was the plan proposed so that you and your pupils might get on the air?—A. The plan of the program or the plan of what you were supposed to do—I don't just understand the question.

Q. Well, that you were to avail yourself and your students; what plan was proposed to you?—A. Well, probably that I would broadcast and a few pupils a half hour every week, probably in the way of instruction, probably a little resume of what was to be played by some advanced students, something like that.

Q. That would be a musical program?—A. Mainly, yes.

Q. In a speech of what you are doing in your school?—A. Yes. I think it was left optional. I don't imagine there was any specification made as to what should be said or not said. I don't recall anything.

Q. Well, if you had something of interest to the general public relating to your work of music and facilities of the local broadcasting station were made available to you, that is WKBB, would not that serve the public?—A. Well, I just hadn't thought about it.

Q. Have you been listening to the programs put out by the local station, WKBB, carrying the recitals from Grant Park, Chicago, between the hours of 7 and 8 in the evening?

Mr. LOVETT. Objected to as incompetent, irrelevant, and immaterial.

A. Well, I could be. I usually listen over WGN. I just have listened through that.

361 Q. Yes, well you get that musical program?—A. Yes; if I am home, sometimes.

Q. That comes into this community?—P. Yes.

Q. Both over WGN and over the local station? A. Yes; Uh-huh.

Q. I believe you said that you draw your pupils mostly from the City of Dubuque?—A. Yes; now I do. I did have a class up at McGregor but not now. I have a few pupils from the country coming in—Sherrills and around in there.

Q. I think that is all. All right, Miss McCaffrey.

DORIS MCCAFFREY,
Witness.

Dr. W. J. CONNELL, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination, by Mr. LOVETT:

Q. Doctor, will you please state your name, address, and occupation?—A. W. J. Connell, 212 Bank & Insurance Building, Dubuque; Health Director of the City.

Q. Doctor Connell, are you generally familiar with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes; I know that the application is being made.

Q. Can you state what the attitude of the Telegraph Herald has been toward your Department in the past through its newspaper?—A. We have always enjoyed excellent cooperation in publishing any articles on health that we wanted to have published or any information on health to the public that we might want to give.

Q. Now if this proposed station should become a fact, to what extent and in what manner would your Department make use of the facilities?—A. Why we would make use of the facilities from the standpoint of broadcasting public health talks which would include all phasis of public health work, child health, sanitation; probably sanitation of foods, and all those general subjects, and I think we would probably use these facilities whereby regular talks might be given to the public.

362 Q. And how frequently?—A. Well, I don't think oftener than once a week would be of very much benefit. I think that probably a short talk once a week you would get more benefit from that than from anything else. Of course, there might be circumstances when we would have an epidemic and when special information might be given to the people. Does that answer the question?

Q. That is when there would be special occasions, emergency occasions when further use would be made of the facilities, is that what you mean?—A. Yes.

Q. Do you know whether or not these talks would be beneficial to the area outside of Dubuque—that is, the five adjoining counties? Do you know anything about the health organizations in those counties?—A. I don't believe that in any of these counties—I don't know which. You mean the surrounding counties?

Q. Yes?—A. I don't believe those counties have any regularly organized public health units other than in some of the counties they have county nurses.

Q. Do they look to Dubuque for information of this nature?—A. Yes. We have a great number of inquiries, and the greatest number of inquiries come from—of course, this is Dubuque County; of course, we supply considerable information to school teachers and members of the board of trustees, and many times the boards of trustees have authorized me, as their representative, and I would go out and make investigations of different contagious diseases which they might have in their counties.

Do you feel that this regular broadcast once a week would be helpful to you in the work of your organization and it would also benefit the surrounding counties?—A. Well, anytime that you can get this public health information to the people it is going to benefit them if they follow the advice. Of course, if they don't follow, then we can't help that.

Q. But you have done your duty when you have given the information?—A. Our conscience is clear.

Q. I believe that is all.

Cross-examination by Mr. GILLOON:

Q. Is Dr. Biermann the head of the Health Department of Iowa?—A. Dr. Bierring.

363 Q. Is Dr. Bierring the head of the Health Department of Iowa?—A. Yes.

Q. In Des Moines?—A. Yes, sir.

Q. He is the president of the American Medical Association at the present time?—A. No. He was last year.

Q. Last year?—A. Yes.

Q. Are there any broadcasts on public health out from his office reaching this territory over the year that you are aware of?—A. I don't know whether there are or not.

Q. You never hear them over WHO?—A. No. I don't believe that I have.

Q. Have you ever talked public health over the local station, WKBB?—A. Yes. I have.

Q. How frequently have you appeared, Doctor?—A. Well, as I remember now, probably in the last year six times.

Q. Yes. Now are you aware that other members of the Medical profession in the City of Dubuque also give public health talks over the air from that station, WKBB?—A. Yes. I think Dr. McNamara has and I believe the local dental society has given talks over WKBB.

Q. And is it not true that other physicians have?—A. Yes, I think they have.

Q. That station has been made available for public health talks?—A. Yes. I think it has.

Q. There was no charge made to you for utilizing it?—A. No, not at any time.

Q. And as I understand it, there has been no charge made to these other doctors or the dental association?—A. No.

Q. Have you ever requested radio time so that you might render a series of public health talks over the local station?—A. No.

Q. Has that occurred to you?—A. I was thinking of that some time ago, but nothing ever came of it.

Q. Yes. You didn't take the matter up with the management of the station?—A. No.

Q. Would you be willing to cooperate to the extent of tendering health talks over that station if the opportunity were afforded you?

Mr. LOVETT. Object to that as based on an unwarranted assumption.

Q. Serving the community?—A. I see no objection, because anything like that is a part of the service that we
364 should render to the people. Anyway to get the information to them.

Q. Yes. You are employed public health physician in the City of Dubuque?—A. Yes, sir.

Q. You spoke about the attitude of the Telegraph Herald as being one ready to cooperate on public health matters. I will ask you if you have not also found it to be the attitude of the station, WKBB, to likewise cooperate?—A. Yes. We have.

Q. You have no fault to find?—A. Absolutely none.

Q. In your public health talks during the past year did you deal with the scarlet fever epidemic that we had?—A. I don't recall giving a talk on that. I don't believe I did.

Q. Hasn't it been more or less the policy of the city from the business standpoint not to broadcast the epidemics that are prevalent?—A. Well, sometimes I think businessmen feel that it might.

Q. Keep the trade away?—A. Keep the trade away. Still, we have never felt that way about it because so many false rumors get out. May I give an illustration?

Q. Yes.—A. In 1927 we had eight cases of infantile paralysis between July and December, and reports came to me that we were having as high as fifteen cases a day die. And when we had scarlet fever last year reports would come in to me that we had a thousand cases in quarantine when the highest we had was thirty to thirty-five.

Q. If you didn't mention that over the air, do you recall whether or not you published an article over your signature or for which you were responsible for in the Telegraph Herald?—A. Yes. Information was published in the Telegraph Herald as to the number of cases.

Q. Through your scrutinization?—A. Yes. The information came from the Health Department.

Q. That was rather intended to give the actual facts?—A. Yes.

Q. Regarding the epidemic and take away from it this exaggeration?—A. Yes.

Q. I think that is all, Doctor.

365 Redirect examination by Mr. LOVETT:

Q. Doctor, has any existing radio station ever offered facilities for a regular broadcast such as you are now proposing?—A. No proposal was made for any regular broadcast, but they told me that any time I wanted to make use of the radio station that I would always be welcome.

W. J. CONNELL, M. D.,
Witness.

Reverend HUGH D. ATCHISON, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Dr. Atchison, if you will give your full name and residence and occupation?—A. Hugh D. Atchison, 1141 Main Street, Dubuque.

Q. And your occupation?—A. Clergyman, Pastor of the St. Luke's Methodist Episcopal Church.

Q. How long have you been connected with that Church?—A. Thirty-six years.

Q. And are you connected with the ministerial association?—A. I have been during all that time and have been president several times during that period.

Q. Are you familiar with the fact that the Telegraph-Herald is proposing to establish a radio station in Dubuque to serve this area?—A. Yes. I heard of it.

Q. Can you state what the attitude of the Telegraph-Herald has been in the past and now is toward your Church and your

religious activities in general in this community?—A. Well, I would like to say when I heard that the Telegraph-Herald was proposing to take over something of this sort—because I was particularly gratified—because of the uniform courtesy toward all religious activities, and so far as my Church is concerned they have been very generous in giving space in their paper to everything that we considered essential and they have been extremely cooperative with my Church and very friendly and very tolerant in every way.

366 Q. If this proposed station be established would you be willing and desirious of using its facilities?—A. We would be very glad to use those facilities and take our share in giving material and time to that purpose.

Q. And in what way and to what extent would you be willing to cooperate?—A. Well in any way that would seem fair to anybody else. I believe I could broadcast a service now and then, and a social hour, and religious work, and broadcast a social service work. We would be glad to furnish the material and the organ recitals. We have a very fine organ.

Q. And you would be glad and willing to make your organ available for that purpose.—A. Yes; and then we have chorus work a good deal like the giving of oratorios, if the hour could be arranged. We give the Messiah every year and have fine soloists from Chicago, but that would be in the evening.

Q. And you always have chimes?—A. Yes.

Q. And they would be available?—A. Yes; and we would be glad to have them used. The chimes are very superior. I don't know of any town west of Chicago, except Denver, that has any chimes to equal St. Luke's. They are the finest we could get. They are a memorial. They are not used as often as I would like to have them, and people come to hear them. They are used on Wednesdays and Saturdays too, but they could be used on special occasions, if desirable.

Q. All right, Mr. Gilloon, you may cross-examine.

Cross-examination by Mr. GILLOON:

Q. In using the chimes, of course, it would be necessary to adopt remote control so as to bring the instrument to the chimes?—A. Yes. It would be. It would have to be some place outside of the building. In other words, before they could pick up the music of the chimes—perhaps across the street would be too close, I don't know. There is the Strand Theatre over there: that would be across the way.

Mr. LOVETT. That would be an engineering problem anyway.

367 Q. You are a member, Dr. Atchison, of the ministerial association locally?—A. Yes.

Q. And as such you have appeared on the Sunday morning services?—A. Yes.

Q. Broadcasted over WKBB?—A. Yes. We have.

Q. That service is broadcasted at 9 o'clock in the morning?—A. Yes.

Q. 9 to 9:30 on Sundays?—A. Yes; they have a committee of the Association to arrange a schedule so we always take our turn; it comes every two or three months.

Q. And that broadcast employs the availability of what talent?—A. Well, we have a choir and the organist and a choir; we always have—and we have a short meditation and a minister.

Q. And how long has that been carried on?—A. About two years.

Q. And are you acquainted with the religious service that is broadcast over WKBB on weekday mornings at nine o'clock; do you ever pick that up?—A. No. I don't believe I have ever tuned in on that.

Q. Now you say that the atitude of the Telegraph Herald has been very tolerant toward all religious matters here in Dubuque? I will ask you whether or not you have found anything to the contrary in the attitude of station WKBB?—A. No; not personally. I have never found any discrimination against anybody. All denominations are represented on their programs.

Q. And this time, from 9 to 9:30 on some mornings, is given to the ministerial association free of charge?—A. I believe it is. Yes, sir.

Q. Now is your son a member of the Chicago Civic Opera Orchestra?—A. Well he has sung with them and with the San Carlos Opera Company. There are three opera companies in Chicago calling themselves the Chicago Opera Company—one Chicago Civic and the Chicago Opera and the Chicago Grand Opera.

Q. May I ask you, Doctor, your son's adopted stage name?—A. Edward Molitore; that is his mother's name he adopted.

Q. Do you know if the opera company with which he is associated participates in the concerts rendered from Grant
368 Park in Chicago over the air?—A. Well I don't know as to that. I think that is a separate organization from any opera, as I understand it. The Chicago Symphony Orchestra is running that Grant Park affair.

Q. I believe I have the program from August 1st to September 7th?

Mr. Lovett. I object to this as entirely immaterial——

Q. Just to refresh your recollection?

Mr. LOVETT. To any issues here.

A. I know my son is not engaged in that.

Q. Do you know that the local station WKBB broadcasts these concerts from Grant Park, Chicago, over its station here in Dubuque between the hour of 7 and 8 o'clock each evening?—A. No. I didn't know that.

Q. You haven't listened in on it?—A. No.

Q. Have you listened to those programs over any other station?—A. Yes.

Mr. LOVETT. I object to this as entirely incompetent, irrelevant, and immaterial. We will be all night here.

A. Yes; I have. I know Mr. Weber very well and also Isaac Van Grove. I know him very well.

Q. State if you would be willing, Doctor, to offer these same services, programs, that you have mentioned without detailing them over the present station WKBB?—A. Well I am conforming to the program of the ministerial association and taking my turn at that hour whenever I am asked. I am willing to do so, certainly.

Q. I meant this enlargement of the program?—A. Well, I have never been approached on that subject.

Q. Well I mean if they were made available?—A. Yes; sure, I think so.

Q. I think that is all. That is all. That is all, thank you.

HUGH D. ATCHISON,
Witness.

ROY COMBS, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Mr. Combs, if you will give your full name please, and your residence and occupation?—A. Roy Combs, Elkader, Iowa: County Agricultural Agent.

369 Q. Of Clayton County?—A. Of Clayton County.

Q. Mr. Combs, are you familiar in a general way with the plans of the Telegraph-Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes.

Q. Will you state what the attitude has been in the past toward farm problems so far as Clayton County is concerned?—A. Well, they have coöperated in a very good way; we have had the best coöperation.

Q. Now, if this station of the Telegraph-Herald be established would you be desirous of making use of these facilities?—A. Yes.

Q. It has been suggested that a daily program, one day to be

devoted to each of the six counties to be served by this proposed station, be carried on? Would you coöperate in the carrying out of such a schedule?—A. Yes; we will coöperate with you.

Q. And in what way would you propose to use the time devoted to Clayton County?—A. Well, we would put out timely information, such as contests and educational meetings, and announcements of contests like corn husking contests and county picnics that farmers are interested in, and anything that is timely and of interest to farmers of our community, especially along our farm programs. We will put out something there that will assist a great deal, because we have to resort to telephones and post cards and letters, and all that, and they don't always get them in time. I remember last winter, when things were not so favorable, they did not get them for two weeks or more.

Q. You are referring to special announcements?—A. Yes.

Q. Now, so far as a program for a day or a week is concerned, of 15 or 30 minutes, what use would you make of that?—A. In a daily program we would put on musical numbers, or talks, or educational topics that are timely. For instance, right now would be a very fine time to go on the radio and tell farmers about this fall's seeding that the drought has taken out, advising them "What should I do now? Should I seed alfalfa or clover?" There is a subject there that you could very well go on the radio and give them a lot of information.

Q. Are there any radio broadcast services available to you now? Is there any farm program received in your area now?—A. Only WLS, but that is general.

370 Q. Do you mean the National Farm Home hour?—A. Yes; but what I mean is anything that is applicable to this home territory or county.

Q. What are the agricultural activities in your county?—A. Well, our county is general farming with a leaning towards dairying; pretty heavy on dairying, hog raising, and alfalfa, and general farming, like northeast Iowa, and we give a lot of attention to legumes, and we have a couple of watersheds in the county where we are emphasizing the saving of the soil by seeding down alfalfa and clover and the like, and liming, and better location of crops—a general soil-building program that we are trying to carry out through our association—and we feel that an opportunity to give them this education would be quite a bit of advantage to us, especially when we are starting campaigns to set those up.

Q. Would you use the radio also in connection with Women's Farm Associations and 4-H Clubs?—A. Yes. For instance, our Chairman of the women's work would be glad to use it; she is quite active and she could present a program of the work they are

carrying out and do a lot of help, to the women of the county. The same way with the Chairman of our Girls' Club. Right now, if we had had the radio this morning, after the County Fair was over, we could have announced the winnings of our Baby Beef Contest and Calf Contest and Girls Demonstration Contest and the Women's Contest for Booths, and all of that. It would have made a nice report, but, you see, we have to relay it through the papers and many of them think it is kind of old by the time they get it, and things like that.

Q. Do these organizations also have musical groups that would be available?—A. Well, we have a farm bureau quartette and a farm bureau sextette and then we have a 4-H Club orchestra.

Q. Would you perhaps use those separately, or, in connection with your weekly broadcasts?—A. Either separately, or, in connection with our weekly program. We would want a varied program; we wouldn't want it all speaking. We have enough talent so that it would not bother much passing it around once a week, so we could have talent prepared to carry them on.

371 Q. Are any radio facilities available to you now that you know of for the type of program that you are suggesting?—A. No; we haven't any to cover us in a local way, except the south part of the State, outside of the general stations in Chicago.

Q. But nothing available for the kind of programs of which you are speaking?—A. No; we haven't any; only the one we tried down here at the Julien, at the hotel, but I came down here and had my people down here a number of times, but the station wasn't strong enough. My people back home reported they couldn't hear that station, and when our people stated they got no response, or couldn't hear it, we just quit. They haven't enough power to get it over the county and our folks didn't get anything out of it, and after a speaker came down here himself we didn't get anything out of it, so we just quit.

Q. That's all.

Mr. Lovett. You may cross-examine.

Cross-examination by Mr. F. D. Gilloon:

Q. Do they broadcast from WOI?—A. Yes; that is one of the general stations that I spoke of.

Q. And WHO at Des Moines?—A. Yes; we get all those general stations.

Q. They all come in with good reception?—A. Yes; the reception is good.

Q. And the numerous Chicago stations?—A. Oh, yes—WLS and WGN.

Q. And WSUI?—A. Yes; we get it, but not so much; the farmers generally pick their own stations and that comes in all alike.

Q. What is the mileage from here to Elkader?—A. Oh, about 60 miles, I would say—55 or 60 miles, I would say.

Mr. LOVETT: Road or air line?

Q. And how far is it from Elkader to the northern boundary of the county—Clayton County?—A. About 18 miles—straight north about 18 miles.

Q. And it extends about 20 miles to the west from Elkader?—A. No; from Elkader it is about 12 miles.

Q. How far is it from Strawberry Point down to Elkader?—A. Well, that is diagonal—that is 16 miles. That
372 is not west; it is southwest, and due west it would be about 15 miles to the Fayette line.

Q. How far would it be to the northwest corner of the county from Elkader?—A. That would be about 20 miles.

Q. Now, in explaining the facilities of the proposed station, what was said to you with regard to the radius in miles it would cover away from Dubuque?—A. What this power would be?

Q. Yes.—A. 500 watts; I believe would cover from 50 to 75 miles, I suppose.

Q. 50 to 75 miles?—A. 50 to 75 miles; yes.

Q. That is what was told to you?—A. Well, around 50 to 75.

Q. Well, I say, that is what was told to you?—A. Yes; I understood it.

Q. You are not a radio engineer?—A. No.

Q. And you wouldn't know the strength of these stations by the number of watts they carry of your own knowledge?

A. No; I wouldn't know about that.

Q. Soil Conservation Program, is that handled through your office?—A. Yes; it is in our office.

Q. And you have a Committee?—A. A County Committee; yes, sir.

Q. A County Committee?—A. And a County Bureau.

Q. And your Committee and Bureau deal directly with the farmers in contacting with them in regard to conservation?—A. They are in charge.

Q. They are in charge?—A. Yes.

Q. And with your township representatives?—A. Yes; Township Committees as well as County Committees.

Q. And in that work information is carried to the farmer pretty well in regard to it? It follows on after the steps of the AAA?—A. Yes; pretty much. Of course, what we get to them we have to send out in a letter, or, after a meeting, and explain it.

Q. Do you operate under a frank?—A. Yes.

Q. And frank envelope?—A. Yes; that is, as long as we meet the requirements. There are certain things you cannot send by a frank.

Q. Well, when you are dealing with the United States governmental matter coming out from the Secretary of Agricul-
373 ture's office in connection with the Soil Conservation Program, then you are authorized to use the frank?—A. Yes.

Q. Is there a station at Decorah?—A. Yes, I believe there is, but I don't believe I have ever heard it.

Q. How far are you from Decorah?—A. Oh, it must be around 55 miles, I should judge. I don't know how large that is, but we hardly ever hear it.

Q. Assuming, Mr. Combs, that the proposed station will not have effective radius where good service would be enjoyed beyond 40 or 50 miles from Dubuque—If that were so, would it serve your purpose for the County of Clayton?—A. If it were 40 miles it would reach about one-half of the county. I would say it would have to go further than 40 miles to reach the outlying edges of it.

Q. Now, in this proposed weekly appearance of yours over the air do you contemplate making a drive to Dubuque to utilize the time?—A. Yes, we will. That is, I am not coming in every time, but somebody will have to come, or, send down the material. Now, I wouldn't say I would come every time myself because I wouldn't have the time, but I can send somebody, or, send the material so they could put it out for us, because one fellow would have to go down every time himself and that is too much of a good thing, but we would have somebody to substitute or pinch-hit on that proposition and schedule this in advance, so we would know a month ahead what the dates were, and what we were going to put on and who was going to do it. Then there wouldn't be any conflicts after we had it lined up.

Q. And what hours do you understand would be available?—A. Well, I would say—I don't know just how their schedule is, but most of the boys figure on from 12:00 to 1:00 would be the best hours for the farm broadcast. We could have from a quarter to five until five, but then farmers are not at home. Meal time is when you would have to catch them.

Q. Well, how is the supper hour, or after?—A. Well, I would rather have the noon hour than the supper hour, altho that is better than in between meal-time, but there is very little variation between the farmers. The noon hour is more punctual and they are more apt to be at home. Then about 12:00 to 1:00 would be the best time.

374 Q. About what hour does the State College at Ames use?—A. Well, I believe that is some time in the morning—8:00 or 8:15 I believe.

Q. Do they use the noon hour at all?

Mr. LOVETT. I object to that as entirely immaterial and getting far afield here.

A. They may have a noon hour broadcast. I don't know whether it is in the morning; they may have one at noon.

Q. In your work do you work in touch with Ames College?—A. Absolutely. I get letters every day practically—sometimes more than I can read.

Q. Don't you avail yourself of that benefit?—A. I am not always home at noon. I leave in the morning and I get my lunch wherever I happen to be. If I am home I have the radio on. The National Home hour is on then.

Q. What hour?—A. It is around 12 or 1 o'clock. I think it is 11:30 to 12:00 or 12:15—somewhere in there.

Q. That's all.

Mr. LOVETT. All right, that's all.

Witness excused.

ROY COMBS, *Co. Agent.*

Mr. L. WALTER DICK, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Give your full name, please, Mr. Dick, and your residence and occupation.—A. L. Walter Dick, residence Dubuque, Meteorologist United States Weather Bureau.

Q. Are you familiar in general with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes.

Q. If this station be established and its facilities offered to you, to what extent will you be willing to use those facilities for the dissemination of weather reports?—A. I will be pleased to furnish the station with the same measure of cooperation that is regularly given to radio stations elsewhere by Weather Bureau Officials. We will furnish any information that is
375 available in our office for broadcast purposes on regular schedules, particularly which primarily constitutes a forecast of weather conditions.

Q. If this station be established and if the Telegraph Herald maintains a line to your office for the purpose of having a broadcast emanate from your place?—A. That system is approved by the weather bureau upon condition that no advertising be associated with the broadcast of weather information.

Q. Has the Telegraph Herald proposed to follow this procedure in this case in the event they are permitted to establish a station?—A. Yes; that is my understanding.

Q. Now, would you be willing to broadcast a forecast from your office if the facilities were offered you?—A. Yes, during regular office hours.

Q. Will you state what program you would follow?—A. I suggest a broadcast of the local forecast at 9:45 a. m., daily, except Sundays and holidays, and a broadcast of local and the Iowa, Illinois, and Wisconsin State forecasts; a summary of weather conditions and river forecasts during the noon hour, about 12:30; and possibly in the latter part of the afternoon, about four P. M., such information could again be broadcast from our office, and I suggest also that about six P. M., the studio might broadcast the local forecast as a repetition, not later than six P. M., but as late in the afternoon as the station would still be on the air.

Q. That would be just before your office closes?—A. Yes, sir. I want to add a bit there. This office of the Weather Bureau will furnish to the studio a copy of the regular publications so the copy will be available to the announcers at all times, as soon as possible after publication.

Q. Now state whether or not you believe that this broadcast direct from the—from your office, either by you or by one of your assistants, would be advantageous.—A. It would save time for us and the studio, I believe, in the case of the earliest broadcast which would be shortly after nine A. M., because that would make it possible to disseminate the forecast by broadcast practically as soon as it is available without having to wait for a messenger to carry it to the studio. Transmitting it to the studio by telephone would increase the danger of errors creeping in by the operator copying it down, because at that hour
376 we are quite badly rushed with trying to get our publication ready for the mail.

Q. Do you believe it would be more effective so far as the listeners are concerned?—A. I believe the general public would be more willing to accept the information so received as official if it was announced as coming directly from the Weather Bureau Office;—without any particular instances in mind, I do know that there have been cases in which there have been broadcasts of mis-information regarding the weather, and that has tended to discredit the information as broadcast from other stations.

Q. Now, if the microphone were available for your use in your office at all times, would you make use of it for emergency broadcasts?—A. I would like to; yes.

Q. Of what advantage would that be?—A. The same advantage as I mentioned before; in that we could make the information available to the public more promptly than by other means; it also retains the stamp of official character of the information, and I believe that it receives the attention of the public more readily if something of that sort is broken in on the broadcast as emergency warnings of that sort usually are in this respect. I have in mind particularly warnings of cold waves and frosts.

Q. Are you disturbed very much now by telephone calls, which might be obviated?—A. In extreme weather, or weather of extreme cold we do have a great many telephone calls, and I can cite one case last winter in which we were delayed two hours beyond the usual time of mailing our weather maps, largely because of the large number of phone calls. Our weather maps are usually in the mail by 9:45, and on that occasion most of them were in the mail by 11:45. Phone calls during severe weather in winter frequently will reach a rate of—I am afraid you may not believe some of these figures, but as high as six to ten or twelve a minute.

Q. And do you feel that a great many of these phone calls might be obviated if you could step to the phone and broadcast?—A. If we could broadcast it directly, or they would, over the phone; I believe if we could broadcast direct, it might be more effective.

Q. Where is the nearest Weather Bureau to Dubuque?—A. The nearest Weather Bureau stations are located at
377 Davenport, LaCrosse, Madison, Des Moines, Chicago, and Charles City.

Q. So these broadcasts of which you speak would be of benefit to an area beyond Dubuque County?—A. Yes, sir; that would serve a community which I feel sure is not adequately served by broadcasts that may be made from stations located where there are other nearby weather bureaus' offices.

Q. That is all. You may cross-examine.

Cross-examination by Mr. GILLOON:

Q. The Weather broadcasts come into this territory over the radio from the Des Moines Station, Chicago Stations, and the Madison station?—A. Yes; there are broadcasts from those stations received here.

Q. Yes; and now do you know how the weather readings at Charles City are related to a broadcasting station?—A. I do not know that they are. I cannot say that they are or are not.

Q. Do you mean those are stations where readings are taken?—A. Those are stations where weather records are made.

Q. Are weather records made here?—A. Yes.

Q. To cooperate with these other stations?—A. Yes.

Q. You are one of the circuit, at Dubuque?—A. Yes; this is one of the regular United States Weather Bureau stations with regularly commissioned personnel.

Q. And this territory then, with these regularly commissioned Weather Bureau stations, are located at Davenport, Chicago, Charles City, Des Moines, and Dubuque; is that what you meant to say?—A. Yes.

Q. Weather stations?—A. Yes; those are Weather Bureau stations; yes. In mentioning those I had that thought only, in mind. I did not have in mind that the weather service from those stations is broadcast from all of them.

Q. The Chicago stations give the general weather conditions over Iowa, Wisconsin, and Illinois?—A. Yes; the future forecasts.

378 Q. Yes. And was that what you had in mind with reference to the noon hour, 12:30?—A. In addition to the local forecast service.

Q. You would repeat the local at noon?—A. I would repeat the local at noon, and also add the other.

Q. And later; in the later part of the afternoon?—A. That would be—my recommendation on that would be a repetition of the local forecast only.

Q. At six P. M.?—A. Local forecast.

Q. And local in the morning at nine A. M.?—A. Yes; the one at nine or 9:15 A. M., I would suggest should be somewhat amplified beyond the wording ordinarily used in our publications, and as given later in the day and as regularly published in the newspaper.

Q. Now, how do you get to your office the readings throughout the territory, with which you make up your chart?—A. They are received in code by telegraph.

Q. By telegram?—A. Yes.

Q. And what time do you have that made up?—A. That information is usually nearly all in our hands by 8:15 or 8:30, and is not all decoded until about nine o'clock—decoded, summarized and studied.

Q. Now what information is broadcast over the local station WKBB?—A. The latest schedule which we have on file calls for a broadcast about 9:30, of what is known as "A shopper's forecast," which is framed to give a forecast of the current afternoon and night of the current day, weather and temperature. About 12:30—shortly before 12:30 they regularly are scheduled to broadcast the local forecast, forecasts for Iowa, Illinois, and Wisconsin, the summary of weather conditions; and they usually also

include a brief statement of some of the high lights of the river stages and the river forecasts.

Q. That comes under your jurisdiction?—A. Yes; that comes directly from the weather map published in my office, a copy of which is furnished to the radio station. At six P. M., the local forecast, only Dubuque and vicinity is usually repeated.

Q. Now during extreme spells of weather state whether or not the information that is secured at your office is broadcast regarding extreme heat and extreme cold?—A. The station has made it a habit to call my office at frequent in-
379 tervals for temperature readings and to supplement that when my office is closed from readings from their own thermometer which is sheltered, a thermometer shelter, which is similar to the type of thermometer used at air-way stations or airports and they amplify that with what they get from the studio and those they get from our office; they regularly announce as the official temperatures.

Q. They have—WKBB*—attempted to cooperate with your office?—A. Yes, they have given us very good satisfaction in a general way. Of course, it has not been possible for me to check up on all of their broadcasts——

Q. No.—A. ——but in those instances in which it has been possible to, the cooperation has been very good.

Q. The only suggested improvement would be remote control from your office?—A. Yes.

Q. What I mean by that, is a wire running into your office?—A. Yes.

Q. I think that is all.

L. W. DICK, *Witness.*

Mr. THOMAS J. RYDER, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by MR. LOVETT:

Q. Will you please give your full name, address, and occupation? A. Thomas J. Ryder, Sheriff of Dubuque County, Dubuque, Iowa.

Q. Sheriff Ryder, are you familiar in general with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. I am.

Q. If such a station be established and its facilities freely offered to your Department, to what, if any, extent would you make use of them? A. Well, I would like to arrange a weekly broadcast pertaining to law enforcement and so forth. And, do you want me to go into this, about this organization?

Q. Yes; any illustrations that might help.—A. I have started an organization in the county, that is, I have got
380 about fifteen units organized. At this time it is my intention to call the president and secretary of the individual units into the city here and have them select their officers for the Dubuque County organization. This organization is organized for the sole purpose of protecting the farmers' personal property. In the last year or two, due to the increase in farm products there has been considerable thievery. In fact, they have gone so far as to organize gangs whereby they will move into a certain community and steal from nine to fourteen or fifteen steers, or maybe twenty or thirty hogs; and that is the reason for this organization. In my talks to the members of this organization, I talked to them relative to always being on the alert and if they saw any suspicious cars or trucks or individuals in their vicinity, and if their suspicions were aroused to the extent that they felt these individuals were there for no good purpose and no good reason, to call the Sheriff's office. I have also got the organization perfected to the extent that about the 1st of September; from about the 1st of September on, in each community or each unit will designate about one man out of every ten to sit up at night and sort of patrol that immediate vicinity. Therefore, that will take care of the entire county by so doing. If we had the facilities as suggested to me here of this Telegraph Herald radio broadcasting system, if there were cars or trucks out in any byroads or side roads and the farmers saw them loading up some stock and had reason to believe that they were stealing this stock and they called me, it would be very beneficial to me as Sheriff and also to the community if we had ways and means to put same on the air to try and apprehend the criminals. A great many times there is major crimes committed in some certain section of the county, and it would be a fallacy for the Sheriff or any law enforcement officer to try to go out there and catch them, because the Sheriff or the law enforcing officer or the law enforcing bodies could not hope to be able to catch them, due to the fact that they would have from ten minutes to a half hour or an hour start; but if we had radio facilities and this information was brought to the attention of the law enforcing officer, he could put it over the air and it would save the
county considerable expense, whereas we are using the
381 long distance to a great extent, necessitating considerable expense to the county and not gaining our objectives half as well as if we had the use of the broadcasting station.

Q. Have you enlisted the aid of the Sheriff in adjoining counties to apprehend these violators?—A. We do when we put in these long-distance calls.

Q. So you could reach the adjoining counties by this radio facility instead of using the telephone?—A. Yes.

Q. You are speaking particularly of the emergency uses to which you would put the facilities?—A. Yes, sir.

Q. Now, for your regular weekly broadcasts?—A. Well, relative to a weekly broadcast, I would try and have something worth while. I have, once a week, to instruct these men to be on the alert; and as to what has happened in other sections of the state. and as to what might be anticipated here.

Q. And safety campaigns, would you dis'eminate warnings as to dangerous crossings and so forth?—A. Yes; for the hit and run driver it would be a fine thing to have something like this. You would have the concerted effort of the populace, and they are going to try to notify the officers, and if he is going north, they are going to be out looking for him.

Q. I presume you would also cover automobile accidents and warnings as to suspicious characters as check passers, and the like?—A. Oh yes; yes sir.

Q. I believe that is all, Mr. Gilloon.

Cross-examination by Mr. GILLOON:

Q. Sheriff, what facilities are provided by the Iowa Department of Investigation under the jurisdiction of the Attorney General's Office for the purpose of broadcasting information relating to law enforcement at the present time?—A. They broadcast all major crimes. We haven't been able to get the service that I feel we are entitled, due to the fact that our service isn't there.

Q. You are equipped with—you and all other Sheriff's offices you understand it, is equipped with a radio receiving set?—A. Yes, sir.

Q. To give you the information that is broadcast by the radio station maintained by the State of Iowa Department of Justice?—A. Yes.

382 Q. And when crimes are committed and the criminal is fleeing, in an effort to apprehend him it is your duty to relay that to this station for announcement, is it not?—A. Yes.

Q. And in connection with this set-up do you understand that the police departments in the State of Iowa and the Sheriffs' offices in the State of Iowa are equipped with receiving sets constantly set for the reception of that information?—A. Yes, sir.

Q. And that service is always available in the State of Iowa?—A. Well, that all depends, Mr. Gilloon; as I stated before, we haven't been able to receive that information. When they came here and installed our service for us; the service was so poor

it was absolutely useless, and no good to us. The County went to the expense of building an a'rial and its cost them around $90.00 for the a'rial alone, and it was money just thrown to the winds; and we received no benefit whatsoever; up to the present time we are in about the same fix. The City of Dubuque, likewise the County of Dubuque, are on a hook-up arrangement; we are paying $13.50 each, to the Bell Telephone Company up here, whereas they have got the receiving set up here in the Fire Enginehouse, that comes into the Fire Enginehouse and is relayed to the telephone office and from there it is shot down to my office, as well as the Police Department. Now, I don't know how they are receiving up there; I don't know. They may be getting good reception; but we are not.

Q. Did you take it up with an individual at the Department of Justice?—A. I took it up with Mr. Brown, and he told me he would have somebody up to look over the set—and I think it is an R. C. A., whether this set is defective or not, I don't know.

Q. How long have you had it in your office?—A. Well, we have had it there—I wouldn't say for sure; maybe eighteen months.

Q. Have you informed the Department of Justice?—A. I informed Mr. Brown at——

Q. Who is Mr. Brown?—A. He is head of the radio broadcasting for the State of Iowa.

Q. And, where does he have his office?—A. Well, I took it up with the Department of Justice; to Mr. Brown, and I did—I addressed it to the Department of Justice, Des Moines.

Q. When?—A. I would say a month ago.

Q. And you continued having defective service for fifteen and a half months?—Well, this new set-up has been in about possibly ten months.

Q. Have you ever taken it up directly with the Attorney General under whose supervision it is?—A. No.

Mr. Lovett. I object to this as entirely incompetent, irrelevant, and immaterial.

Q. Have you? I want an answer.—A. I answered no.

Q. Have you ever done so?—A. No.

Q. How long have you been Sheriff of Dubuque County?—A. About three years and a half.

Q. And you have sorely felt the need of efficiency in that system?—A. Yes, sir; and we have complained, Sir; and so has the Police Department complained.

Q. I move that be stricken out as hearsay, what the Police Department did. Have you ever availed yourself of the facilities of the local, WKBB, station?—A. Yes, sir.

Q. How often have you appeared on that station?—A. As to broadcasting?

Q. Yes.—A. Personally?

Q. Yes.—A. I have never appeared there.

Q. In what way have you used the facilities?—A. We have notified them; called them up and asked them if they would broadcast at different times for us.

Q. When you had some emergency matter or some criminal you wanted to apprehend?—A. Yes.

Q. Well, what was the occasion?—A. Different occasions that might arise; apprehension of criminals or someone that may have been lost.

Q. Did you receive cooperation?—A. I did.

Q. Was their attitude right on it?—A. It was.

Q. Is there any reason why you could not contact these different units of your organization by broadcasting your information at some stated particular time so that they might be on the air to hear it?—A. Not if it was extended to me, certainly no.

Q. Has it ever been refused to you?—A. I have never refused it, nor have I been honored by having a request from them.

Q. Do you remember an occasion, with Mr. Carpenter, when the party went over to Freeport, Illinois, to welcome
384 the Black Diamond train to Dubuque?—A. The Green Diamond, yes.

Q. Do you remember having a conversation with Mr. Carpenter at that time?—A. I think I had two conversations with him, if I am not mistaken.

Q. Didn't he tell you he was willing to extend the facilities of the broadcasting station to you?—A. They did extend them to me insofar as making those announcements.

Q. And in making announcements for the apprehension of criminals?—A. Yes, sir; they did that.

Q. You have never made known the time you desire to appear weekly on the air with a short talk on law enforcement, have you?—A. No, sir.

Q. If the local facilities are made available to you, will you use them for that purpose?

Mr. LOVETT. I object to that as based on an unwarranted assumption.

Q. Will you?—A. Yes, sir.

Q. You know that they maintain a station in the Julien Hotel in the City?—A. Yes, sir.

Q. Or rather, a studio?—A. Yes, sir.

Q. When are these crimes usually committed, of stealing steers and hogs in the county? Is that in the daytime or is it a night-

time operation?—A. I don't know, Mr. Gilloon, as I stated as there were any hogs or steers stolen here.

Q. I thought you said——?—A. I said my organization was organized for the purpose of preventing that. It has happened throughout Iowa.

Q. I thought you said there had been thievery of steers and hogs in this county?—A. Not in this county; no, sir.

Q. When does it happen in the other counties; is it a day or nighttime operation?—A. Well, that would be hearsay; I couldn't answer that.

Q. What do you understand?—A. I understand, Mr. Gilloon, that those things take place at night.

Q. And it is at night that you would want the radio available to apprehend the criminal?—A. Mr. Gilloon, most of the time I don't know that until the next day.

Q. Yes; but if your fifteen units were in operation and you had one out of ten members patrolling the road constantly at night and they should see the truck going by, or load up in a farmer's yard, then the knowledge would be brought to you, would it not?—A. Yes, sir.

Q. And then, it is at that time and at that hour that you would desire to employ the radio?—A. Yes, sir; it would.

Q. Do you understand the hours that have been applied for by this Telegraph Herald Station?—A. Yes, sir.

Q. What are they?—A. From 6:30 in the morning to sunset.

Q. And many months of the year the sun sets as early as five o'clock?—A. That is right.

Q. And sometimes earlier; at 4:15?—A. Well, I don't know.

Mr. LOVETT. That is a matter of official determination.

Q. When would you consider the best hour for broadcasting to contact the members of this proposed organization that you have?—A. I would suggest that the noon hour would be about the best.

Q. The noon hour?—A. Yes.

Q. And when would be the best hour for your talk on law enforcement?—A. On what?

Q. Law enforcement.—A. Sometime during the noon hour, I would think.

Q. What would you think about the supper hour, or following it?—A. The Supper Hour; no, the noon hour is the set time on the farm. The supper hour doesn't mean so much. There is a supper hour, but what time is it? Some of them will do their chores first and others will eat and then do their chores.

Q. Did you discuss that matter with Mr. Lovett?—A. As to what would be the best time?

Q. Yes.—A. No; I did not.

Q. According to the proposals that have been made here, it is proposed to the farm agents on during the noon hour; that would be likely to deprive you of that opportunity?

Mr. LOVETT. You better qualify that to the time the County Agents were going to take; they would not take an hour!

Q. It is in the record to work them in into the noon hour, and various educators into the noon hour; and it is also proposed to work the Weather Bureau announcements into the noon hour——

Mr. LOVETT. The record will speak for itself.

Q. And various musical programs. Now, could you, if that were done, select any other hour, such as an evening hour, to make your talk?—A. As good as the noon hour?

386 Q. Yes.—A. Not in my estimation; no, sir.

Q. What would be the second best?—A. Oh, possibly 6:30; but I wouldn't consider that.

Q. You say you wouldn't consider that?—A. No; I wouldn't consider it; no.

Q. For your talk?—A. No.

Q. If you couldn't get the noon hour you wouldn't talk, is that it?—A. Certainly. Sometime during the noon hour.

Q. Then, by the noon hour, you mean from twelve to one?—A. That is right.

Q. Are your cars used in the Sheriff's office equipped with radios?—A. We don't have any cruisers.

Q. Well, you have cars that go out, whether they are cruisers or not?—A. Yes.

Q. Are those cars equipped with radios?—A. No, sir; they are not.

Q. I will ask you if Mr. Carpenter didn't offer you service of broadcasting anything that you might have at any stated hours so that your deputies who might be away from the office in different parts of the County, if equipped with a radio set, could pick it up and be looking for it?—A. If he did, I don't recall it. Well, now, he may have; I wouldn't say as to that. They have been very fine to us; I will say that. They have broadcast everything we have requested.

Q. And you would be just as willing to broadcast this information and your noon day talk on law enforcement over their station as over the station of the Telegraph Herald?—A. Yes, sir.

Q. That is all.

Redirect examination by Mr. LOVETT:

Q. Mr. Ryder, this thievery you mention having taken place in the night time; what time of the night does that take place?

Mr. GILLOON. Object to that as calling for an incompetent conclusion, and hearsay.

Mr. LOVETT. You said it took place at night, and I asked him what time at night.

Mr. GILLOON. Well, that is all right if he can answer on his own personal knowledge, or from some reliable report.

387 A. Well, I could, perhaps bring up the bulletins from the Iowa State Department to verify that statement; but it might happen at any time at night; but if you are asking for an answer from me in the way of a guess; I wouldn't say one hour; but I would say from 1:00 to 3:00.

Q. After midnight?—A. Yes.

Q. Are you familiar with the fact that the local station signs off after eleven o'clock?—A. No, sir; I am not familiar with that fact. I don't know what time.

Q. That is all.

THOMAS J. RYDER,
Witness.

4 o'clock P. M., August 24, 1936.

Rt. Rev. Msgr. THOMAS CONRY, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination, by Mr. LOVETT:

Q. If you will please give your full name?—A. I have only one, first, Thomas Conry.

Q. Your residence and occupation?—A. Residence, Columbia College, Fourteenth Street, Dubuque.

Q. And your occupation?—A. Well, as far as the College is concerned, Administrator——in other words, President.

Q. Msgr. Conry, will you please tell us something about Columbia College; its departments, and what type of institution it is?—A. Well, it is a denominational college under the auspices of the Catholic Church, and the Archbishop of Dubuque is supervisor and the chairman of the board of trustees, and then it is a liberal arts college highly accredited, and is not only accredited by the North Central but the American Association of Colleges, or Association of American Colleges rather, and it is also approved by the American Association of Universities. It is a very unusual thing for a college of our student membership—I was going to say of our size—which means the same thing. And what else would you like?

Q. Your various departments—music and so forth?—A. Yes. Well, it has all the departments found in a liberal arts
388 college. Music is not a regular department, but music has been highly cultivated and our College has won national distinction especially by its vested choir. And then it has all

the departments, usually—well that is down, you don't need to repeat that. Then there is an academy too, which is highly accredited and stands among the best, boarding, well it isn't only boarding, it is a day school as well as boarding. I suppose under the music you might put down there that both the College and the Academy each has a band. And would you want anything more in detail?

Q. Will you mind telling us briefly from what area your College draws its students?—A. Well, from Iowa principally and then from the surrounding states, such as Wisconsin, Illinois, Minnesota, Nebraska, Missouri, and the Dakotas, and a limited number from the far west, and from the far east; in this country.

Q. State whether or not a substantial number of your students come from a radius of forty to fifty miles of Dubuque?—A. Yes; a very substantial number comes from that radius.

Q. Msgr. Conry?—A. Pardon me, and also in recent years and for many years a number from Porto Rico.

Q. Are you familiar in a general way with the plans of the Telegraph Herald to establish a radio station in Dubuque to serve this general area?—A. Yes; I just showed you some jottings I put down when Mr. Kane called me the first time, and not only am I familiar, but the administrative officers I called to discuss this with them before I gave an answer.

Q. Now if the Telegraph Herald be successful in its efforts to establish this proposed station, to what, if any, extent will your College be interested in helping with programs?—A. Utilizing the station generally. Well, I couldn't tell that definitely. I can't answer to any degree that it would, but it would cooperate and I think the number of times would have to be worked out after I get the whole faculty together and present the case to them.

Q. Would you be interested in a regular broadcast from this proposed station?—A. What do you mean by regular?

Q. Well, on a certain day or certain days?—A. Well, personally, I would be, but I wouldn't want that to go down in the record as final just now until after I see.

389 Q. It would have to be worked out in detail with your administrative council?—A. Yes. You see I can't discuss this. I want this to come before the whole faculty because every member of the faculty would be especially interested because they may want to broadcast some of their subjects, and I can't have that until sometime in the latter part of September because we don't open until the middle of September.

Q. But the point is you will be interested in using the facilities and you personally hope to make use of them, but the details will have to be determined?—A. Yes. Yes. That is it.

Q. Will you state of your own knowledge what the attitude of the Telegraph Herald has been and is now toward education generally and particularly toward the activities of your College?—A. Well, it has been very courteous always and very liberal, that is in advertising our College in a news way, and I can say I think the same thing for the other educational centers of the City, but I am speaking, of course, only for ourselves.

Q. Now, if this proposed station be established, you would be interested in using it? I am speaking now of your own personal opinion. You would be interested in using it for special occasions as well as regular broadcasts?—A. Yes.

Q. That is all.

Cross-examination by Mr. GILLOON:

Q. Msgr. Conry, in this matter of taking depositions, I am representing the local station WKBB who are intervening in this application for another station.—A. They are intervening, you say?

Q. They are intervening and in opposition to it, and that is my purpose in appearing and cross-examining you.—A. Yes.

Q. For the record. Now Monsignor, you said that the plans of the local station were explained to you by Mr. Kane of the Telegraph Herald sometime ago?—A. Yes.

Q. And that you jotted down some data at that time?—A. Yes; some notations.

Q. And then wasn't later a further explanation made as to the plans of the station?—A. No.

390 Q. Now what was the outlined plan as made known to you upon which you have predicated your answers?—A. Well, he was speaking there rapidly, and I jotted down a few things, and here they are. I didn't suspect that I was going to have to present these to anybody else, except to the council up there, and there may have been a few things I didn't put down, but they would not be so important. The Telegraph Herald has made application for a 500-watt station. Application must go before Radio Commission in Washington. Interest in educational and cultural programs. Commission wants them to show that educational and musical institutions are interested and would take advantage of the station, if built. And then I put down parenthetically music and talks. And then the question was, "Will you cooperate and use its facilities?" and the answer I gave after consultation with the administrative council was "Yes," and then I asked how often the broadcasts would take

place. Mr. Kane answered "He didn't know at that time." And then "How far it would carry" was a question asked, and it would carry, he thought, seventy-five miles. Well, then I asked him whether he fathered that information. But I don't know whether the other educational institutions were cooperating, and he said they are, and I mentioned the Ministerial Association and also public schools, Wartburg and the University of Dubuque, and Clarke College. And then the last notation was: No financial obligation.

Q. Now, Msgr. Conry, when you inquired with reference to how often the——A. Broadcasts would take place?

Q. Yes—broadcasts would take place; you meant of the material that you would supply?—A. Well, I wanted to know so that we could adjust ourselves to the general program. What I wanted to know especially was how often we might be expected to appear.

Q. And you are of the impression that the broadcast would carry to a radius of approximately thirty-five miles?—A. Well, that is what he thought at the time, but I don't think he said it was definite. That was Mr. Kane's impression, I think.

Mr. LOVETT. I object to that as immaterial. That is a matter to be determined by the engineer.

Q. Have you, Msgr. Conry, ever availed yourself of the facilities of the present local broadcasting station WKBB?—
391 A. Yes; the College has. I wouldn't be able to say just how often, but I know at certain times the College has broadcasted. I wasn't consulted with regard to any of these specific programs because I don't think we broadcast on any special occasion. The last I heard there was to be a five minute broadcast concerning the Prom on the evening of the commencement, but they have broadcast at other times. But I couldn't tell you specifically what the programs were that were broadcast.

Q. Would you say that they have exhibited an attitude of cooperation?—A. Yes; so far as I know they have. I think they are glad to broadcast. They didn't come to me very often, but I think it was Father Peters and Father Long that they dealt with most in regard to these things.

Q. Father Peters is the professor that deals considerably with radio at the College?—A. Yes. I would almost say that he is an authority, he is a very remarkable man in that field. Recently the Bishop of Helena, Montana, brought him out to install a loud speaker system in his place, and the speakers couldn't be understood until this device was installed. And, by the way, that Bishop of Helena was in today and yesterday and he told me that it was a marvelous piece of work and they were very grate-

ful and wanted to tell the Archbishop of Dubuque how great a success it was.

Q. In connection with broadcasting educational talks and educational matter prepared by the different priests who are professors at the College and Academy, if the administrative board and the professors were willing to cooperate, would you be agreeable to a plan of furnishing the same talent to the present local station WKBB if it were open?—A. You mean the same material?

Q. The same type of material.—A. I certainly would and I think our council and our faculty would, too.

Q. The vested choir has appeared on the local station, has it not?—A. Let's see? I don't know that it has.

Q. I believe we have it in the record from Msgr. Wolfe.—A. That it appeared? I wouldn't remember that it did this year, and the last broadcast that I remember of the choir was up at some place at Waterloo, and then a year ago it was hooked up in the national hook-up, I couldn't say ex-
3927 actly: but about two years ago on the occasion when the Archbishop also spoke I was out of the City some place: but now, it is very probable that they did broadcast this year sometime. But I can very easily verify that.

Mr. Lovett. The record speaks for itself anyway.

Q. Do you remember the local WKBB giving you a hook-up by remote control at the College when the Ninth National Convention of Catholic Students' Mission Crusade was held?—A. Yes.

Q. Under the local supervision of Msgr. Wolfe?—A. Yes.

Q. I don't know——A. Well he was one of the first organizers, he and Father Steffens had charge of that, and he represented the Propagation of the Faith.

Q. You recall there being a local hook-up at that time through the local station?—A. Yes.

Q. I think that is all.—A. You were speaking about some of these broadcasts. Now there was a deal of broadcasting done, but I believe the Mississippi Singers under Father Kelly: that was some of our College students and some past College students, and there might have been some others, but I don't think that was regarded as a distinct college activity.

Q. That was over the local station?—A. And they did that many times.

Q. Father Kelly is quite musically inclined?—A. Yes. He has quite a lot of talent in music and we are sending him away next year to study at Iowa.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. The data which you had jotted down and to which you referred a little while ago was the data which you presented to the administrative council?—A. Yes. I had this very thing before them, this very thing. I had my stenographer just run it off quickly and I was surprised when it was made out, she had it all correct except I think the word "advantage", and I think advertising she had said, and I told her it was "advantage", "to good advantage." I got the votes of all. One man was leaving the city and I put it before him hurriedly and he said it was O. K., and they weren't all there but most of them were and
393 as a matter of fact those that would be most apt to be consulted were present.

Q. So that it only remains the matter of working out the matter of the program in detail?—A. Yes.

Q. That is all.

THOMAS CONRY, *Witness.*

4:45 o'clock P. M.

Notary Public. Hearing adjourned until 7:30 o'clock P. M.

7:30 o'clock P. M., August 24, 1936.

H. R. BRUNNEMEYER, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Please give your full name, address, and occupation—A. Henry Raquet Brunnemeyer; Farm Advisor (as they call us over there) in the Agricultural Extension Service, in connection with the Jo Daviess County Farm Bureau and the Experimental Station at Illinois of the United States Department of Agriculture, at Elizabeth, Illinois.

Q. Mr. Brunnemeyer, will you state in general the activities of your office?—A. Well, I am employed by the County Bureau of Directors, and work with farmers and young people of Jo Daviess County in the matter of agriculture extension chiefly. Do you want something of our program, or, just that in a general way?

Q. Well, just in a general way? Can you give me the number of farms in your county and the type of agricultural pursuits followed?—A. Our farming is chiefly dairy, with a good bit of diversity along with that, such as hog raising, sheep farming, beef cattle, poultry, and the raising of hay is one of our chief industries in Jo Daviess. We are not a grain-producing area. We do produce some wood; we have considerable wood lot area. Our farmers recently—I think we have something like 2,100

farms in the county, and we service through our member-
394 ship about just approximately one-third. We have in our county—we have a $15.00 membership proposition that helps to finance the organization with State and Federal funds. We do not receive any money from the county. We in our general work—we service any farmer that asks for service, and specifically service the members of our organization. Of course, my work takes me into 4-H Young Adult work. We have a separate organization for young people that we call our Young Adult organization and that takes in the ages of 21 to 30, people between the 4-H age and the age actually taken over farming operations. I might mention I listed some of the things here; I only have a part of them. Our Dairy Herd Improvement Association work; music and drama work, with adults and young people working in cooperation with the CCC Camp. We have one camp in the county, a colored camp. We work with reforestation and the Forestry Service, both State and National, and, of course, at present we are right in the midst of this new Soil Conservation Service. One of our major projects this year has been along with insect control work. We have the problem of controlling—or trying to at least—the white grub situation, and there was considerable damage this year with grasshoppers, and as we are quite a hog-producing area we get into the sanitation and vaccination service, and selection of pure-bred stock, etc. Then, of course, in connection with the State and National service we work with the Emergency Seed Loan set-up, a farm loan service, and then we have our lime and phosphate program. In our own office we do considerable testing of lime rock. We have a natural abundance of limestone in our county; a good many quarries and local crushers, and you can see from that that we do considerable lime-rock testing to find out what the calcium content of this rock is, and then we work in cooperation with our Home Bureau. That is another organization set-up primarily for women and girls, and then we have our cooperative marketing of livestock; that is a separate project set-up under its own township and county committees. We have a township committee that looks after this particular project—one in each township—that takes in the marketing of livestock through cooperative channels, and then we have two cooperative creameries. Of course, working at all times
395 with soils and crops; crops takes in principally new varieties. In working with the selection of seed—high-bred corn, I might say in our county we are working in cooperation with the University of Illinois and the U. S. D. A.; we had one corn plot of 52 varieties last year; different varieties to check up on yields. That, in general, is part of our work.

Q. Mr. Brunnemeyer, can you state what, if any, radio programs are received in your area at the present time, which you consider of particular benefit and interest to the farmers in your area?—A. Well, I can say that WLS puts on a good service with their farm program, stressing the markets, daily markets, livestock markets, grain, etc., and the NBC program that is put on, I believe, every noon. There was a service out of this town over the radio; I don't know whether that is continued or not, but it didn't reach us.

Q. It didn't reach all of your county?—A. No. We tried to, or, we tuned in a good many times, and I know our own folks tried to get that reception while we were on that program over here, but it was too weak, or the wrong hour, but it just couldn't get through.

Q. Are any of the programs you mentioned being received now localized, or, of a general nature?—A. General nature.

Q. Are you familiar with the plans of the Telegraph-Herald to establish a radio station in Dubuque to serve Dubuque County and adjoining counties, especially in regard to agricultural matters?—A. Well, only insofar as I have learned through talking with Mr. Arndt of the Telegraph-Herald, and I understand that their plan is to include our county and the neighboring counties around Dubuque in a farm program, and, of course, in our own case we are certainly glad that this is happening, because we feel that the contacting of our farmers by means of the air that the surface has merely been scratched.

Q. To what extent would you be willing to cooperate and be interested with the Telegraph-Herald in producing a farm program if they be permitted to establish this radio station?—A. Well, I certainly would appreciate a chance to appear on this program and work in harmony with them and with the neighboring counties: I would take any time that we would be permitted to have and set up a program to work in with theirs.

396 Q. Would you be willing to appear on a regular weekly broadcast from your county?—A. Yes, sir.

Q. What would be the general nature of the program that you would propose to broadcast?—A. Well, from the experience I have had in this sort of thing I feel that the more of our own folks that we can work into a program of this kind the better; for instance, we had a statewide dairy judging contest at Urbana a few weeks ago, and our own group managed to place second; we have a group of boys that I know would be delighted to get on the air and tell of their own experiences. We moved fifty down to the State Fair and they took part in a chorus of 2,000 voices at Springfield, and we could pick groups—musical

groups—from an organization of that kind to work in with talks of an educational nature, and it seems to me that that sort of a program would appeal to our farm people rather than just have the Agent go up there week after week and talk along some particular line.

Q. Would you plan to have participation for other farmers—participate also?—A. Absolutely. We have people in our three organizations, Farm Bureau, Home Bureau and the Junior Organization, and it is our job to develop leadership, but we can't do that if we are the whole show, so we would like to work these people into the picture.

Q. Would you plan to vary the program in such a way that it would be particularly designed to interest the farmers in your own county?—A. It would be my idea to arrange programs quarterly in advance and notify them several days before and remind them that they are on this program.

Q. Now, in addition to this regular broadcast, would you be interested in making use of the proposed facilities on special occasions, or, emergency occasions?—A. For instance, how do you mean that?

Q. Well, for instance, the grasshopper scourge?—A. Well, it would be one fine way of reaching our farmers in time of emergency. For instance, this year the Government furnished our counties with bran and sodium arsenite to mix a bait, and by means of the radio we could give this information out to our farmers in a much better way than just by means of some of those other contacts. Of course we did get it into the papers; we
397 ran a weekly column in our newspapers, but people that are accustomed to getting these things over the radio get them in a much better way, and I believe the influence would be—the bearing that I would have that way—quite an important part in a program of that kind.

Q. And are there special occasions—contests, etc.—that would lend themselves to broadcasting?—A. Well, our corn-husking contest and the 4-H show (a two days' show) and the farmers' picnic (that comes tomorrow) and annual meetings. A good many occasions—special occasions—that we would have to use, if we had facilities over there for a service of this kind, and I understand this station would have, if it materializes to that point.

Q. They have offered to broadcast such special occasions by remote control?—A. That's right.

Q. Can you state from your own knowledge what the attitude of the Telegraph-Herald has been toward agriculture, and particularly your own county, and how they have cooperated with

you, if they have?—A. Well, I rode to Polo today, or, had a meeting at Polo today, in connection with this Soil Conservation Program, and we were discussing the Telegraph-Herald. Well, in fact, our Vice President, living across the river here, made the statement that he felt that the attitude of the Telegraph-Herald toward the farmers and farm programs had always been of such a nature that it was in every instance helpful.

Q. What has been your own experience?—A. Well, our experience has been through our reporter there in Elizabeth that any time we have any news of an agricultural nature we never have any difficulty in getting all the space we want in the Telegraph-Herald, and in fact they have gone all the way on that and headlined articles, especially 4-H news and news of that kind—young peoples' work—and we have felt (this may be aside from what you are after here) but, we have felt that they have been fair in their attitude towards the Triple A Program, Corn-Hog Program—call it what you will—all the way.

Q. And that has met the approval of your people?—A. Absolutely—absolutely. I will say that they are one of the few papers that have taken that attitude.

Mr. LOVETT. That's all, Mr. Gilloon.

398 Cross-examination by Mr. GILLOON:

Q. You said you were familiar with the proposed plan of operation of this station if a permit or license is granted? What is your understanding in regard to this plan? How was it explained to you?—A. Well, in talking the matter over with Mr. Arndt he just said their plan was to put in a broadcasting station, if it were possible; that would reach out into a territory that would cover a radius—well, it would reach out fifty miles from Dubuque and that we, through our extension service, would be invited in to take part in a weekly or daily farm program, and, as it was explained to us, the schools would be included in this program, and that we would be given a good place, that is, on our time on the program, and I personally felt that probably the best time they could reach our people is right during the noon hour, say between a quarter to twelve to 12:30, and it was intimated that we would have that time.

Q. And did he advise you the hours of operation that were applied for?—A. Sir?

Q. Did he advise you the hours of operation that were applied for, and when he would be permitted to broadcast?—A. No.

Q. The length of hours in the day?—A. No. Nothing was said that I recall of that.

Q. Now, you spoke about remote control. What was mentioned on that—in regard to that?—A. Well, with our corn-

husking contest, for instance, they seemed to think that they would have facilities that would reach over into our county midway. These are held as a general rule in the middle of the county, so that they would be put on the air at intervals. I don't know how that is worked. We have never had that facility in our county, altho I have seen it worked in state contests over WLS.

Q. Now, what service do you have coming into Elizabeth and Jo Daviess County with which you are familiar that carries farm programs? You mentioned NBC, I believe?—A. WLS.

Q. Does Madison reach you?—A. Not very effectively. WILL in Illinois; we can't get them, either.

Q. Well, I meant the ones that you do get.—A. Well, those are about the two chief stations.

399 Q. NBC carries the National Farm & Home hour?—A. Yes, sir.

Q. When does that come in?—A. 11:30 I believe.

Q. Until 12:00?—A. Till 12:00.

Q. It is for one hour, is it not?—A. I guess so; I wouldn't know.

Q. 11:30 to 12:30?—A. Yes; I guess so.

Q. That is daily?—A. Yes.

Q. And WLS, when does that broadcast its program?—A. well, I generally get it at noon. Of course we have an early morning program, but I get it chiefly for the market reports. The Dinner Bell Hour, I believe they call it, and the Breakfast Hour; early in the morning radio programs and announcements. My time with the radio is not very regular.

Q. That is, your listening time?—A. That's right, my listening time; and so those are the two that I am principally acquainted with.

Q. The local station, WKBB, gave you time on the air?—A. Yes, sir; at 5:15—from 5:00 to 5:15.

Q. 5:00 to 5:15?—A. Yes.

Q. Were you ever on the noon hour?—A. No, sir.

Q. Does Rockford come to your county?—A. Yes; we get Rockford.

Q. Do they have a farm program?—A. Off and on. I know of Advisers in that territory that have been on a program, but I don't believe they have a regular farm program.

Q. Yes; but you don't know for sure?—A. I don't know for certain; no. I believe we had some correspondence on that and they asked if we would be interested, but they don't reach us with any degree of clearness. So we are interested in reaching our people in a manner that they can hear these programs. I had a letter this morning from WJJD asking me if we would be

interested in putting on an early morning ten minutes and at noon once a month. Of course, that is a long ways off for us, it seems like; we can do a lot more good if we had something that was local and it would reach our people.

Q. Do you know that the local station WKBB has a farm program every noon from 11:45 to 12:00 noon?—A. No; I didn't know that.

400 Q. Mr. Kerrigan—You are acquainted with Mr. Kerrigan, our local Farm Agent in Dubuque?—A. Yes.

Q. Did you know that he appears every noon, from 11:45 to 12:00?—A. No; I didn't know that. The thing just died out with us. Nothing was said, except we had a schedule of meetings, and when that schedule ran out it stopped right there. Why, I don't know; we never heard any more from it. We never failed to appear on that program; we were always on time; never once failed to meet our part of it.

Q. Yes, and how long did you continue to participate in that program?—A. Well, I should say six months.

Q. Six months?—A. Yes, sir.

Q. Did you find the attitude of WKBB willing to cooperate?—A. When we worked with the first group that was in there they were very good, and it seemed like about half way through. There was a change made and—well, several times I know we had to wait for—we were pushed later on into the program. They had something else on and we were told to wait until they could find a place in there for us. Well, I think that some of our boys kind of felt like other things were of a good deal more importance than the farm 15 minutes.

Q. How long ago was that, Mr. Brunnemeyer?—A. Well, our last program was probably—well, just at a guess, it would be five or six months ago.

Q. Aha!—A. Our folks couldn't get the program over WKBB.

Mr. GILLOON. I move that the last answer be stricken out as the conclusion of the witness, and predicated on hearsay.

Mr. LOVETT. The witness has already testified that it could not be received in his territory.

A. Well, I won't say this immediate territory because I know our farmers across the river were getting it, but I mean the farmers in the central part of the county and east, that is, beyond twenty mile radius, because I know in our own home my wife tried to get programs that I was on.

Mr. GILLOON. I will have to object to this answer and move to strike it out as hearsay.

Q. You were on the other end?—A. Yes, sir. O. K.

Q. I think that's all.

401 Redirect examination; Mr. LOVETT:

Q. Mr. Brunnemeyer, you referred to the noon hour as being the most acceptable period for the broadcast which you mentioned as being most desirous of getting over the proposed station, and you also, I believe, referred to that noon hour as being 12:00 to 12:30—11:45 to 12:30—did you mean to stop at 12:30?—A. No; I would say any time between 12 and 1 o'clock, or 12:45. Farmers, as a rule, get in about a quarter to twelve, and they are back in the field about one o'clock.

Q. They are cleaned up and out by one o'clock?—A. Yes. Myself, I get in about 11:30 and back out about a quarter of one.

Q. Now, you mentioned a change which had taken place in the local station? Was that a change in ownership or a change in management?—A. A change in management; the folks that we dealt with.

Q. Did you say that that occurred about six months ago, or was that longer?—A. Well, that occurred about nine months ago; about midway in the time that we were on the air.

Q. That is, you broadcasted at a scheduled time?—A. We were shifted around.

Q. There was no regularity of broadcast?—A. No.

Q. That's all.

Recross-examination by Mr. GILLOON:

Q. In appearing on the program, did the program go on one day a week, that is, some hour out of one day a week?—A. No, sir. We had about one period a month.

Q. One period a month?—A. Yes, sir. There were, I think, seven or eight counties in it at that time.

Q. And how many times did you appear on your home program while it was going on and being carried?—A. I might say about seven.

Q. And how long were you on? How long was the program carried?—A. Six months, as I recall; I could check that definitely.

402 Q. And, as I understand, one period a month?—A. Yes.

Q. And how many speakers would appear on each program at each period?—A. Well, we were on—I don't know as I get your question. We were on—we made out the schedule.

Q. Now, just a moment! I will make myself clear. Was this program conducted by talent or speakers from Jo Daviess County, or from the other surrounding counties?—A. The surrounding counties.

Q. Six surrounding counties, including Dubuque?—A. Seven or eight.

Q. Now, what I am getting at is, with this particular period each month when that broadcast would go on, would one speaker from each county appear on each separate program?—A. Yes. Let me see now—I believe that was two days a week.

Q. Oh!—A. Two days a week.

Q. Oh, well now, I didn't understand you.—A. Well, I didn't put it that way before.

Q. You stated once a month?—A. No, two days a week, and we had seven or eight counties. I believe it was eight and, you see, that would put us on—well, about——

Q. Well, that changes it. You said once a month. You meant the program went on twice a week?—A. That's right.

Q. And one of you would appear at each program?—A. Yes, sir. I think one or two months we were on twice; it all depended on how the days happened to stack up, you see.

Q. I think that's all.

(Witness excused.)

——— ———, *Witness.*

Dr. EMIL H. RAUSCH, called as a witness on the part of the Applicant, after having been first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Please give your name, address, and occupation.—A. My name is Emil H. Rausch; I am an ordained clergyman,
403 and am at present President of the Wartburg Theological Seminary here at Dubuque, Iowa.

Q. Will you explain just briefly what the Wartburg Theological Seminary is?—A. Yes. The Wartburg Theological Seminary is the midwestern school of the American Lutheran Church, whose headquarters are at Columbus, Ohio; in which the Pastors are trained for the Lutheran Church. The men that are received by the Seminary are supposed to have the four years college training with a B. A., if possible, and they get their special theological training at the Seminary. It is a three year course and a graduate leads up to a B. D., or Bachelor of Divinity; with a graduate school leading to a Master of Sacred Theology; M. S. T. I might add that our student body is limited; our capacity is seventy-six, but we don't want more than about sixty to seventy students, because that is just a big enough turn-over for us at the end of every three years.

Q. Does your student body come from a wide area, or a local area?—A. No, it comes from a very widely distributed area all the way from Alberta and Saskatchewan, Canada, and all the

way between, we usually have students; in the Mississippi Valley all the way down to Texas.

Q. Dr. Rausch, are you familiar in a general way with the plans of the Telegraph Herald to establish a radio station to serve Dubuque and nearby counties?—A. Yes, I think I am.

Q. Will you state to what, if any, extent your Seminary would be interested in cooperating in the broadcasting of programs over this proposed station if it become a fact?—A. I might say that we would be keenly interested in a periodic program, once a week, or twice a month, as the case might be; a program of a devotional, educational character, with a certain type of music; and when I say a certain type of music I have in mind a pipe organ; I have in mind chorus and quartette singing. When I say a devotional program, I have in mind a Matin service every morning. We have a Matin service every morning at 7:20, and that consists of hymns, responsive chanting, and a scripture lesson, and a prayer, and we have a vesper usually every evening at 5:50.

Q. How long does this Matin service last?—A. Now, those services last usually only about ten minutes. I might add
404 this; that the evening vesper service is used for practice preaching. We can't let these boys loose on a suffering public without giving them a reasonable amount of preparation; and of course, when that takes place, then a vesper service is longer in duration.

Q. Would you be interested if facilities were made available, in broadcasting this Matin Service that you said lasts from 5:50?—A. Yes, I think we would be glad to do that.

Q. Now, you speak of a periodic vesper service on Sunday afternoon; of what nature would that be? Would that be in English?—A. Well, these are the thoughts I had. After I began to think of what the Telegraph Herald had in mind, I thought of a periodic service sometime on Sunday afternoon. I am not thinking of our Vesper, let me say about four o'clock; that would last fifteen or twenty minutes; and perhaps quartette singing, and then the regular liturgical setting, a scripture lesson, and a brief address, winding up with a prayer. Then this other thought came to me. Now, I know this territory around here pretty well. I think I know the whole State of Iowa pretty well, as far as that goes; and I know we have a large constituency of the Lutheran Church, which after all, the German Language is still the heart language; and I thought it might be a good thing if occasionally we arranged a vesper service in German, with a brief scripture lesson in German and German Hymns. I think a great many of our people in the rural section, and right here in

the city of Dubuque, I know three of our churches conduct services in German;—that would be very acceptable.

Q. You would be willing to prepare and broadcast a periodical service in German?—A. Yes, I think I could do that; say one Sunday in the month, something like that.

Q. Now, are there special occasions on which you would care to make use of these facilities in connection with musical groups you might have developed?—A. Well, I hadn't thought about that phase particularly. I see no reason why we shouldn't do that. There are occasions when it might be very fine if we could make use of a facility of that kind.

Q. Do you still sponsor St. Olaf's Choir?—A. We didn't "sponsor" St. Olaf's Choir last time; but we did up until
405 the last time. Nobody has to sponsor St. Olaf in Dubuque, you know; they go across, that's all there is to it!

Q. That is all, Mr. Gilloon.

Cross-examination by Mr. Gilloon:

Q. You are acquainted, Doctor, with the fact that we already have in the city of Dubuque a local radio station, WKBB?—A. Yes; I know that.

Q. Would you be willing to give any, or all of these; or to participate, rather, in programs over the local station WKBB?—A. The Seminary as such has never been invited to participate. Our quartette has, and I know our Lutheran Pastors have, but this is the first time we have ever been asked to participate; but I don't see any reason why, if we were asked, why we wouldn't do it. Individuals have done it.

Q. Yes; you would the same way as you would if another station were established here?—A. Oh, yes; I suppose so; yes.

Q. Have you ever participated in the Sunday morning services?—A. I, personally?

Q. Yes.—A. No.

Q. Are you a member of the Ministerial Association?—A. No. I am not; simply because I haven't any time. I have lectures when they meet.

Q. You are aware of the fact that Sunday morning services are conducted by the Dubuque Ministerial Association?—A. Yes.

Q. Over Station WKBB?—A. Yes; sure.

Q. And are you aware of the fact that there is a daily program over the local station WKBB from nine to nine-fifteen A. M. a Studio-Church program?—A. No; no, I am not. In fact, I am frank to say that what I know of the local stations; of their programs, is largely hearsay.

Q. You haven't listened?—A. By hearsay I am. My wife and my daughter, they have listened in. I have occasionally, but not often.

Q. Have you ever listened in on the Inspirational Talks given daily from 5:15 to 5:45?—A. No; I have not.

Q. Pardon me, 5:30 to 5:45.—A. No; I have not.

406 Q. You have never requested the privilege of appearing over the local station with any broadcasting any of the services you mentioned, the vesper?—A. No; I have never requested it.

Q. Or your Matin services?—A. It so happened I never asked for the privilege. No; I haven't.

Q. Did you say that the facilities had been offered to you?—A. Yes.

Q. That is what they were saying that you said.—A. Yes; Dr. Carriel, of the Presbyterian Church, was up to my house; he came to see me on that; it so happened, that that particular Sunday I couldn't make it.

Mr. LOVETT. Did that request come from Dr. Carriel?—A. Yes; you know him?

Q. Is he connected with the Ministerial Association?—A. I don't know whether he was at the head of that broadcasting Committee, or not.

Q. The request came from him and not from the station?—A. No; that request came from him. The station has never made the request; not to my knowledge.

Q. Now—well, Doctor, you understand, do you not; or is it not your understanding that the attitude of the local station WKBB to leave its facilities open to religious services to be broadcast?—A. Yes; that is my understanding that they leave their facilities open for that.

Q. When have you given thought to this particular program that you mentioned tonight; and outlined?—A. Just the last few days.

Q. Since you were approached to be a witness here?—A. Since I was approached by Mr. Arndt, and since I wrote that letter that you probably have on file; I don't know.

Q. Prior to that the matter had not occurred to you?—A. No. Prior to that I paid no attention to it.

Q. I think that is all.

Redirect examination by Mr. LOVETT:

Q. Dr. Rausch, I shall refresh your memory. It was a letter dated August 4th. It is since August 4th that you have been considering this maater in your mind?—A. Yes; it is since

407 August 4th that I have been mulling this matter over in my mind.

Q. Dr. Rausch, will you state what the attitude of the Telegraph Herald has been toward education and religious matters in this community, and particularly in respect to your Seminary?—A. Well, I feel very cordial. Whenever I have had any dealings whatsoever with the Telegraph Herald I have met with the utmost courtesy. They have met me more than half the way. That has been my experience with the Telegraph Herald.

Re-cross examination by Mr. GILLOON:

Q. Doctor, the letter you referred to, under date of August 4th, 1936—— A. Yes?

Q. Was that letter written in response to a request to—— A. To write it?

Q. No; to be a witness on behalf of the Telegraph Herald; or was it?—A. I didn't understand it that way.

Q. Or did it give an explanation of what the proposed to do—it had to do with the application for a radio station?—A. I had an interview with a representative of the Telegraph Herald on the proposition; I am frank to say.

Q. Pardon me?

Mr. LOVETT. Let the witness answer.

Q. Pardon me; the "proposition"; tell just what you mean by that "proposition"?—A. This proposition of establishing a broadcast for educational, devotional, and cultural purposes, and I am frank to say that when this was approached to me, why, of course I took it immediately. That would be in my line to do that. The next thing would be, just in what way can I cooperate, and what am I willing to do.

Q. Well, I was trying to fix the time.—A. And I wrote that letter at that time; not as a witness for the Telegraph Herald or anybody, as far as I could see; but simply to say we were willing to back that.

Q. I was just getting at the time.—A. Absolutely.

408 Q. That had to do with the same subject that you talked with Mr. Arndt about later?—A. Yes, sir; it did. Absolutely. It did.

Q. That is all.

EMIL H. RAUSCH,
Witness.

CERTIFICATE OF NOTARY PUBLIC AND SHORTHAND REPORTER COMBINED

STATE OF IOWA,
Dubuque County, ss:

I, John W. Kintzinger Jr., a Notary Public of Iowa in and for Dubuque County, do hereby certify that the witnesses named in the foregoing Depositions were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning this hearing; that the depositions were taken at the time and place mentioned, to-wit, on August 21, 22, and 24th, 1936, at the Chamber of Commerce Building, in the city of Dubuque, Iowa; that the said depositions were taken down in shorthand by me, and by me or under my supervision, transcribed by typewriter and submitted to the said witnesses for reading, correction (if any), and signature; except that of Mr. H. R. Brunnemeyer, whom I was unable to reach because he had gone on a vacation—automobile trip; however, I will submit to him for reading, correction, and signature a true copy (carbon copy) of his deposition, and forward it to you, duly, especially certified by me, as soon as possible. I further certify that EACH deposition is a true, full, and correct record of the testimony given by these respective witnesses.

I further certify that I am not of counsel or attorney for any of the parties named in the above-named depositions or captions, that I am not related to any of the said parties, and am not in any way interested in the outcome of the cause.

In Witness Whereof I have hereunto set my hand and affixed my Notarial Seal this 5th day of September, A. D. 1936.

[SEAL] JOHN W. KINTZINGER, JR.
Notary Public of Iowa,
in and for Dubuque County.

My Commission expires on the 4th day of July, A. D. 1939.

409 7:30 o'clock P. M., August 24, 1936.

H. R. BRUNNEMEYER, called as a witness on the part of the Applicant, and after being first duly sworn by me as Notary, testified as follows:

Direct examination by Mr. LOVETT:

Q. Please give your full name, address, and occupation.—A. Henry Raquet Brunnemeyer, Farm Advisor (as they call us over there) in the Agricultural Extension Service, in connection with the Jo Daviess County Farm Bureau and the Experimental Station at Illinois of the United States Department of Agriculture, at Elizabeth, Illinois.

Q. Mr. Brunnemeyer, will you state in general the activities of your office?—A. Well, I am employed by the County Bureau of Directors and work with farmers and young people of Jo Daviess County in the matter of agricultural extension chiefly. Do you want something of our program, or just that in a general way?

Q. Well, just in a general way. Can you give me the number of farmers in your county and the type of agricultural pursuits followed?—A. Our farming is chiefly dairy, with a good bit of diversity along with that, such as hog raising, sheep farming, beef cattle, poultry, and the raising of hay is one of our chief interests in Jo Daviess. We are not a grain-producing area. We do produce some wood; we have considerable wood-lot area. Our farmers recently—I think we have something like 2,100 farmers in the county, and we service through our membership about just approximately one-third. We have in our county—we have a $15.00 membership proposition that helps to finance the organization with State and Federal funds. We do not receive any money from the county. We in our general work—we service any farmer that asks for service, and specifically service the members of our organization. Of course, my work takes me into 4-H Young Adult work. We have a separate organization for young people that we call our Young Adult organization and that takes in the ages of 21 to 30, people between the 4-H age and the age actually taken over farming operations. I might mention I listed some of the things here; I only have a part of them. Our Dairy Herd Improvement Association work; music and drama work, with adults and young people working in cooperation with the CCC Camp. We have one camp in the county, a colored camp. We work with reforestation and the Forestry Service, both State and National, and, of course, at present we are right in the midst of this new Soil Conservation Service. One of our major projects this year has been along with insect-control work. We have the problem of controlling—or trying to, at least—the white-grub situation, and there was considerable damage this year with grasshoppers, and as we are quite a hog-producing area we get into the sanitation and vaccination service and selection of pure-bred stock, etc. Then, of course, in connection with the State and National service we work with the Emergency Seed Loan set-up, a farm-loan service, and then we have our lime and phosphate program. In our own office we do considerable testing of limerock. We have a natural abundance of limestone in our county; a good many quarries and local crushers, and you can see from that that we do considerable limerock testing to find out what the calcium content of this rock is, and then we work in cooperation with our Home Bureau. That is another organi-

zation set-up primarily for women and girls, and then we have our cooperative marketing of livestock; that is a separate project set-up under its own township and county committees. We have a township committee that looks after this particular project—one in each township—that takes in the marketing of livestock through cooperative channels, and then we have two cooperative creameries. Of course, working at all times with soils and crops; crops takes in principally new varieties. In working with the selection of seed—high-bred corn, I might say in our county we are working in cooperation with the University of Illinois and the USDA; we had one corn plot of 52 varieties last year; different varieties to check up on yields. That, in general, is part of our work.

Q. Mr. Brunnemeyer, can you state what, if any, radio programs are received in your area at the present time, which you consider of particular benefit and interest to the farmers in your area?—A. Well, I can say that WLS puts on a good service with their farm program, stressing the markets, daily markets, livestock markets, grain, etc., and the NBC program that is put on, I believe, every noon. There was a service out of this town over the radio; I don't know whether that is continued or not, but it didn't reach us.

411

Q. It didn't reach all of your county?—A. No. We tried to, or, we tuned in a good many times, and I know our own folks tried to get that reception while we were on that program over here, but it was too weak, or the wrong hour, but it just couldn't get through.

Q. Are any of the programs you mentioned being received now localized, or of a general nature?—A. General nature.

Q. Are you familiar with the plans of the Telegraph-Herald to establish a radio station in Dubuque to serve Dubuque County and adjoining counties, especially in regard to agricultural matters?—A. Well, only insofar as I have learned through talking with Mr. Arndt, of the Telegraph Herald, and I understand that their plan is to include our county and the neighboring counties around Dubuque in a farm program, and, of course, in our own case we are certainly glad that this is happening, because we feel that the contacting of our farmers by means of the air that the surface has merely been scratched.

Q. To what extent would you be willing to cooperate and be interested with the Telegraph-Herald in producing a farm program if they be permitted to establish this radio station?—A. Well, I certainly would appreciate a chance to appear on this program and work in harmony with them and with the neighboring counties. I would take any time that we would be permitted to have and set up a program to work in with theirs.

Q. Would you be willing to appear on a regular weekly broadcast from your county?—A. Yes, sir.

Q. What would be the general nature of the program that you would propose to broadcast?—A. Well, from the experiences I have had in this sort of thing I feel that the more of our own folks that we can work into a program of this kind the better; for instance, we had a statewide dairy-judging contest at Urbana a few weeks ago, and our own group managed to place second; we have a grou' of boys that I know would be delighted
412 to get on the air and tell of their own experiences. We moved fifty down to the State Fair and they took part in a chorus of 2,000 voices at Springfield,, and we could pick groups—musical groups—from an organization of that kind to work in with talks of an educational nature, and it seems to me that that sort of a program would appeal to our farm people rather than just have the Agent go up there week after week and talk along some particular line.

Q. Would you plan to have participation for other farmers—participate also?—A. Absolutely. We have people in our three organizations, Farm Bureau, Home Bureau, and the Junior Organization, and it is our job to develop leadership, but we can't do that if we are the whole show, so we would like to work these people into the picture.

Q. Would you plan to vary the program in such a way that it would be particularly designed to interest the farmers in your own country?—A. It would be my idea to arrange programs quarterly in advance and notify them several days before and remind them that they are on this program.

Q. Now, in addition to this regular broadcast, would you be interested in making use of the proposed facilities on special occasions, or emergency occasions?—A. For instance, how do you mean that?

Q. Well, for instance, the grasshopper scourge?—A. Well, it would be one fine way of reaching our farmers in time of emergency. For instance, this year the Government furnished our counties with bran and sodium arsenite to mix a bait, and by means of the radio we could give this information out to our farmers in a much better way than just by means of some of those other contacts. Of course we did get it into the papers; we ran a weekly column in our newspapers, but people that are accustomed to getting these things over the radio get them in a much better way, and I believe the influence would be—the bearing that I would have that way—quite an important part in a program of that kind.

Q. And are there special occasions—contests, etc.—that would lend themselves to broadcasting?—A. Well, our corn-husking

contest and the 4–H show (a two days' show) and the farmers' picnic (that comes tomorrow) and annual meetings. A
413 good many occasions—special occasions—that we would have to use, if they had facilities over there for a service of this kind, and I understand this station would have, if it materializes to that point.

Q. They have offered to broadcast such special occasions by remote control?—A. That's right.

Q. Can you state from your own knowledge what the attitude of the Telegraph-Herald has been toward agriculture, and particularly your own county, and how they have cooperated with you, if they have?—A. Well, I rode to Polo today, or, had a meeting at Polo today, in connection with this Soil Conservation Program, and we were discussing the Telegraph-Herald. Well, in fact, our Vice President, living across the river here, made the statement that he felt that the attitude of the Telegraph-Herald toward the farmers and farm programs had always been of such a nature that it was in every instance helpful.

Q. What has been your own experience?—A. Well, our experience has been through our reporter there in Elizabeth that any time we have any news of an agricultural nature we never have any difficulty in getting all the space we want in the Telegraph-Herald, and in fact they have gone all the way on that and head-lined articles, special 4–H news and news of that kind—young people's work—and we have felt (This may be aside from what you are after here) but we have felt that they have been fair in their attitude towards the Triple A Program, Corn-Hog Program—call it what you will—all the way along.

Q. And that has met the approval of your people?—A. Absolutely—absolutely. I will say that they are one of the few papers that have taken that attitude.

Mr. Lovett: That's all, Mr. Gilloon.

Cross-examination by Mr. Gilloon:

Q. You said you were familiar with the proposed plan of operation of this station if a permit or license is granted? What is your understanding in regard to this plan? How was it explained to you?—A. Well, in talking the matter over with Mr. Arndt he just said their plan was to put in a broadcasting station, if it were possible, that would reach out into a terri-
414 tory that would cover a radius—Well, it would reach out fifty miles from Dubuque and that we through our extension service would be invited in to take part in a weekly or daily farm program, and, as it was explained to us, the schools would be included in this program, and that we would be given a good place, that is on our time on the program, and I personally felt

that probably the best time they could reach our people is right during the noon hour, say between a quarter to twelve to 12:30, and it was intimated that we would have that time.

Q. And did he advise you the hours of operation that were applied for?—A. Sir?

Q. Did he advice you the hours of operation that were applied for, and when he would be permitted to broadcast?—A. No.

Q. The length of hours in the day?—A. No. No; nothing was said that I recall of that.

Q. Now, you spoke about remote control? What was mentioned on that—in regard to that?—A. Well, with our corn-husking contest, for instance, they seemed to think that they would have facilities that would reach over into our county midway. These are held as a general rule in the middle of the county, so that they would be put on the air at intervals. I don't know how that is worked. We have never had that facility in our county, altho I have seen it worked in state contests over WLS.

Q. Now, what service do you have coming into Elizabeth and Jo Daviess County with which you are familiar that carries farm programs? You mentioned NBC, I believe?—A. WLS.

Q. Does Madison reach you?—A. Not very effectively. WILL in Illinois, we can't get them either.

Q. Well, I meant the ones that you do get?—A. Well, those are about the two chief stations.

Q. NBC carries the National Farm & Home hour?—A. Yes, sir.

Q. When does that come in?—A. 11:30, I believe.

Q. Until 12:00?—A. Till 12:00.

Q. It is for one hour, is it not?—A. I guess so; I wouldn't know.

Q. 11:30 to 12:30?—A. Yes; I guess so.

Q. That is daily?—A. Yes.

115 Q. And WLS, when does that broadcast its program?—A. Well, I generally get it at noon. Of course, we have an early morning program, but I get it chiefly for the market reports. The Dinner Bell Hour, I believe they call it, and the Breakfast Hour; early in the morning radio programs and announcements. My time with the radio is not very regular.

Q. That is, your listening time?—A. That's right, my listening time, and so those are the two that I am principally acquainted with.

Q. The local station, WKBB, gave you time on the air?—A. Yes, sir; at 5:15—from 5:00 to 5:15.

Q. 5:00 to 5:15?—A. Yes.

Q. Were you ever on the noon hour?—A. No, sir.

Q. Does Rockford come to your county?—A. Yes; we get Rockford.

Q. Do they have a farm program?—A. Off and on. I know of Advisors in that territory that have been on a program, but I don't believe they have a regular farm program.

Q. Yes; but you don't know for sure?—A. I don't know for certain; no. I believe we had some correspondence on that and they asked if we would be interested, but they don't reach us with any degree of clearness. So we are interested in reaching our people in a manner that they can hear these programs. I had a letter this morning from WJJD asking me if we would be interested in putting on an early morning ten minutes and at noon once a month? Of course, that is a long ways off for us, it seems like; we can do a lot more good if we had something that was local and it would reach our people.

Q. Do you know that the local station WKBB has a farm program every noon from 11:45 to 12:00 Noon?—A. No; I didn't know that.

Q. Mr. Kerrigan—You are acquainted with Mr. Kerrigan, our local Farm Agent in Dubuque?—A. Yes.

Q. Did you know that he appears every noon, from 11:45 to 12:00?—A. No; I didn't know that. The thing just died out with us. Nothing was said, except we had a schedule of meetings, and when that schedule ran out it stopped right there. Why, I don't know; we never heard any more from it. We never failed to appear on that program; we were always on time; never once failed to meet our part of it.

416 Yes; and how long did you continue to participate in that program?—A. Well, I should say six months.

Q. Six months?—A. Yes, sir.

Q. Did you find the attitude of WKBB willing to cooperate?—A. When we worked with the first group that was in there they were very good, and it seemed like about half way through. There was a change made and—well, several times I know we had to wait for—we were pushed later on into the program. They had something else on and we were told to wait until they could find a place in there for us. Well, I think that some of our boys kind of felt like other things were of a good deal more importance than the farm 15 minutes.

Q. How long ago was that, Mr. Brunnemeyer?—A. Well, our last program was probably—well, just at a guess, it would be five or six months ago.

Q. Aha!—A. Our folks couldn't get the program over WKBB.

Mr. GILLIOM. I move that the last answer be stricken out as the conclusion of the witness and predicated on hearsay.

Mr. LOVETT. The witness has already testified that it could not be received in his territory.

A. Well, I won't say this immediate territory because I know our farmers across the river were getting it, but I mean the farmers in the central part of the county and east—that is, on a twenty-mile radius—because I know in our own home my wife tried to get programs that I was on.

Mr. GILLOON. I will have to object to this answer and move to strike it out as hearsay.

Q. You were on the other end?—A. Yes, sir. O. K.

Q. I think that's all.

Redirect examination Mr. LOVETT:

Q. Mr. Brunnemeyer, you referred to the noon hour as being the most acceptable period for the broadcast which you mentioned as being most desirous of getting over the proposed station, and you also, I believe, referred to that noon hour as being 12:00 to 12:30—11:45 to 12:30—did you mean to stop at
417 12:30?—A. No; I would say any time between 12 and 1 o'clock, or 12:45. Farmers, as a rule, get in about a quarter to twelve, and they are back in the field about one o'clock.

Q. They are cleaned up and out by one o'clock?—A. Yes. Myself, I get in about 11:30 and back out about a quarter of one.

Q. Now, you mentioned a change which had taken place in the local station? Was that a change in ownership or a change in management?—A. A change in management; the folks that we dealt with.

Q. Did you say that that occurred about six months ago or was that longer?—A. Well, that occurred about nine months ago; about midway in the time that we were on the air.

Q. That is, you broadcasted at a scheduled time?—A. We were shifted around.

Q. There was no regularity of broadcast?—A. No.

Q. That's all.

Recross-examination by Mr. GILLOON:

Q. In appearing on the program, did the program go on one day a week; that is, some hour out of one day a week?—A. No, sir. We had about one period a month.

Q. One period a month?—A. Yes, sir. There were, I think, seven or eight counties in it at that time.

Q. And how many times did you appear on your home program while it was going on and being carried?—A. I might say about seven.

Q. And how long were you on? How long was the program carried?—A. Six months, as I recall; I could check that definitely.

Q. And, as I understand, one period a month?—A. Yes.

Q. And how many speakers would appear on each program at each period?—A. Well, we were on—I don't know as I get your question? We were on—we made out the schedule.

Q. Now, just a moment! I will make myself clear. Was this program conducted by talent or speakers from Jo Daviess County or from the other surrounding counties?—A. The surrounding counties.

418 Q. Six surrounding counties, including Dubuque?—A. Seven or eight.

Q. Now, what I am getting at is, with this particular period each month when that broadcast would go on, would one speaker from each county appear on each separate program?—A. Yes. Let me see now—I believe that was two days a week.

Q. Oh!—A. Two days a week.

Q. Oh, well now, I didn't understand you?—A. Well, I didn't put it that way before.

Q. You stated once a month?—A. No; two days a week, and we had seven or eight counties. I believe it was eight, and, you see, that would put us on—well, about——

Q. Well, that changes it?. You said once a month? You meant the program went on twice a week?—A. That's right.

Q. And one of you would appear at each program?—A. Yes, sir. I think one or two months we were on twice; it all depended on how the days happened to stack up, you see.

Q. I think that's all.

(Witness excused.)

H. R. BRUNNEMEYER,
Witness.

[Endorsed:] Docket No. 3967. App. Exhibit 3. Hearing before Federal Communications Commission 9/14/36. Ward & Paul, Official Reporters.

RETAIL AND WHOLESALE OUTLETS IN DUBUQUE, IOWA

Candy and Confectionery	47
Grocery Stores	111
Grocery and Meats	22
Meat Markets (Incl. Sea Food)	38
Department Stores	4
General Merchandise	8
Variety 5c, 10c, $1 Stores	5
Motor Vehicle Dealers (new & trade)	18
Filling Stations	42
Garages & Repair Shops	10
All Other Automotive Establishments	13

	Men's Clothing Stocks	17
	Family Clothing Stores	2
419	Women's Ready-to-Wear Stores	6
	Women's Accessories Stores	8
	Other Apparel Stores	5
	Other Stocks—Shoe Stocks	24
	Furniture & Household Groups	15
	Radio and Music Stores	8
	Restaurants, Cafeterias, Lunch Rooms, and other Eating places	30
	Lumber and Building Material Dealers	8
	Electrical Shops (Without Radio)	4
	Heating & Plumbing Shops	7
	Paint and Glass Stores	3
	Hardware & Farm Implement Stores	8
	Farmers Supplies Stores Including Feed and Fertilizers	5
	Cigar Stores & Stands	18
	Coal, Wood, & Ice Dealers	14
	Drug Stores	27
	Jewelry Stores	10
	Miscellaneous	55
	Total	592

Docket No. 3967. App. Exhibit 4. Hearing Before Federal Communications Commission 9/14/36. Ward & Paul, Official Reporters.

Exhibit #C

TENTATIVE PROGRAM SCHEDULE FOR ONE WEEK

(Proposed Telegraph Herald Station)

SUNDAY

8:30– 9:00 Uncle Reads the Telegraph Herald Funnies.
9:00– 9:05 Church Calendar: Announcements of Services, pastors, subject matters during the week, special activities.
9:05– 9:30 Churches of Dubuque.
9:30–10:00 Sunday morning Organ Concert (Local or Thesaurus).
10:00–10:30 Radio Bible Class (Dubuque Ministerial Assn.).
10:30–11:00 Symphonic Gems (Thesaurus).
420 11:00–12:15 Church Services (Dubuque Ministerial Assn. & Catholic Churches).
12:15–12:45 Luncheon Music (The Brigadiers—Ray Brandle, Director).
12:45– 1:15 New-Comers Club (Miss Esther Hoare).
1:15– 1:30 Telegraph Herald Local and Territorial News (John Fuhrman, State Editor).
1:30– 1:45 Farm Home (transcription).
1:45– 2:00 Musical Interlude (Miss Marie Werdell).

2:00– 2:30 Dramatics (University of Dubuque; Wartburg Seminary; Clarke College; Columbia; Senior Hi; St. John's Dram).
2:30– 3:00 Vocal Selections (Thesaurus).
3:00– 3:30 Civic Clubs Program (Y. M. & Y. W. C. A., P. T. A., Boys Club, Woman's Club).
3:30– 4:00 Instrumental Music (Gus Fuhrman & His Swing Band).
4:00– 4:30 Vesper Service (University of Dubuque).
4:30– 5:00 College Rhythm (transcription).
5:00– 5:15 Birthday Club.
5:15– 5:30 Current Events (Wm. Kennedy-Staff Reporter).
5:30– 6:00 Hymns of Yesteryear (Ballads and Folk Music).

MONDAY

(Rotary Club Occassionally at 1:30)

7:00– 8:00 Early Risers Hour (transcription).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. & Sheriff's Office).
8:05– 8:30 Merry Melodies (transcription).
8:30– 8:45 Morning Devotions (Catholic Clergy: Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (University of Dubuque).
9:00– 9:15 News Flash (Payson Berg, City Editor).
9:15– 9:20 Local Weather Report Direct from Weather Bureau (L. Walter Dick).
9:20– 9:30 Mother Goose (Preschool Age—transcription).
9:30– 9:45 Local Market Review (John Fuhrman, State Editor).
9:45 10:15 Telegraph Herald Women's Institute (Miss Ann Bormann & Miss Elsie Garnier, Society & Asst. Society Ed.).
10:15–10:45 Musical Requests (Chick Luckritz & His Luke Ritz Orch.).
10:45–11:00 Health Talk (Dr. Connell, Dubuque Health Dept.).
11:00–11:15 Shut-In Program (electrically transcribed).
11:15–11:30 General Market Report (Earl Sands, Wire Editor).
11:30–12:00 Waltz Time (Gus Fuhrman & His Swing Band).
12:00–12:15 News Flashes (Wm. Kennedy, Staff Reporter).
12:15–12:20 Tri-State Weather Forecast Direct from Weather Bureau.
12:20–12:30 Protective Program (Sheriff T. J. Ryder).
12:30– 1:00 Dubuque County Farm Program (County Agent Kerrigan).

1:00– 1:30 Organ Recital (Doris McCaffery).
1:30– 1:45 Book Review (Book Editor).
1:45– 2:30 Modern Melodies (Thesaurus).
2:30– 2:45 Behind the Scenes (Re Radio & Stage & Screen Stars and Prominent Persons).
2:45– 3:00 News Commentator (Harry Schlichter, Managing Editor).
3:00– 3:30 Dubuque County School Program (Supt. Joseph J. Flynn).
3:30– 4:00 Symphonic Gems (Electrical transcription).
4:00– 4:05 Local Weather Forecast direct from Weather Bureau.
4:05– 4:30 Closing Market Quotations (Earl Sands, Wire Editor).
4:30– 5:00 Orchestrations (Local and Transcription).
5:00– 5:15 Sports Review and Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Children's Program (Electrical transcription).
5:45– 6:00 News Flashes & Closing Weather Report (Carl Wilhelm).

422 TUESDAY

(Kiwanis Club Occasionally)

7:00– 8:00 Early Risers Hour (transcription).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. & Sheriff's Office).
8:05– 8:30 Merry Melodies (transcription).
8:30– 8:45 Morning Devotions (Catholic Clergy; Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (transcription).
9:00– 9:15 News Flash.
9:15– 9:20 Local Weather Report Direct from Weather Bureau.
9:20– 9:30 Mother Goose (Transcription; or various Mother's Clubs, Congregational, Presbyterian, etc.).
9:30– 9:45 Local Market Review.
9:45–10:15 Telegraph Herald Women's Institute.
10:15–10:45 Musical Requests (Bus Canfield and His Orchestra).
10:45–11:30 City of Dubuque Police Dept.
11:30–11:30 Dubuque Academy of Music (Prof. Kleine).
11:30–11:45 General Market Report.
11:45–12:00 Shut-In Program (Electrical transcription).
12:00–12:15 News Flashes.
12:15–12:20 Tri-State Weather Forecast, Direct from Weather Bureau.

12:20–12:30 Country Music.
12:30– 1:00 Delaware County Farm Program (County Agent Huehn; 4-H Club, etc.).
1:00– 1:30 Organ Concert (University of Dubuque).
1:30– 1:45 Travel Talks (C. E. Rhoades, Mgr., A. A. A.).
1:45– 2:30 Musical Selections (Vocal and Instrumental—transcription).
2:30– 2:45 Behind the Scenes (Editorial & Publicity Dept.).
2:45– 3:00 News Commentator (Payson Berg, City Editor).
3:00– 3:30 Delaware County School Program (County Supt. Pratt).
3:30– 4:00 Symphonic Gems (Electrical transcription).
423 4:00– 4:05 Local Forecast Direct from Weather Bureau
4:05– 4:30 Closing Market Quotations.
4:30– 4:45 Parochial Schools (Grade and High—Rt. Rev. Msgr. Wolfe & Teaching Staff).
4:45– 5:00 Orchestrations (Local and Transcription).
5:00– 5:15 Sports Review and Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Children's Program (Electrical transcription).
5:45– 6:00 News Flashes & Closing Weather Report.

WEDNESDAY

(Lions Club Occasionally at 1:00)

7:00– 8:00 Early Risers Hour (transcription).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. & Sheriff's Office).
8:05– 8:30 Merry Melodies (transcription).
8:30– 8:45 Morning Devotions (Catholic Clergy: Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (Miss Marjorie Wilson).
9:00– 9:15 News Flash.
9:15– 9:20 Local Weather Report Direct from Weather Bureau.
9:20– 9:30 Mother Goose (transcription or Various Mother's Clubs Congregational; Presbyterian, Immanuel, etc.).
9:30– 9:45 Local Market Review.
9:45–10:15 Telegraph Herald Women's Institute.
10:15–10:45 Musical Requests (Gus. Fuhrman & His Swing Band).
10:45–11:00 Fashions, Patterns, and Household Arts.
11:00–11:15 Clarke College of the Air.
11:15–11:30 General Market Reports.
11:30–12:00 Morning Musicale (Thesaurus).

12:00–12:15 News Flashes.
12:15–12:20 Tri-State Weather Forecast Direct from Weather Bureau.
12:20–12:30 Old Fashioned Melodies (Thesaurus).
12:30– 1:00 Jackson County Farm Program (County Agent Krause).
424 1:00– 1:30 Organ Recital (Martha Zehetner).
1:30– 2:00 Shut-In Program (Electric transcription).
2:00– 2:30 Better Bridge (Mrs. Kleinschmidt).
2:30– 2:45 Behind the Scenes (Radio, Stage & Screen Stars, Prominent Persons of National, State, County & City Repute).
2:45– 3:00 News Commentator.
3:00– 3:30 Jackson County School Program (Supt. Martin).
3:30– 3:45 Symphonic Gems (Electric transcription).
3:45– 4:00 Closing Market Quotations (Earl Sands, Wire Editor).
4:00– 4:05 Local Weather Forecast Direct from Weather Bureau.
4:05– 4:30 University of Dubuque Musicale (Remote Control).
4:30– 5:00 Dubuque High School (Orchestra, Band, Glee Club, Dramatic Clubs, etc.—De Tella, Director).
5:00– 5:45 Sports Review and Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Children's Program (Electrically transcribed).
5:45– 6:00 News Flashes & Closing Weather Report.

THURSDAY

7:00– 8:00 Early Risers Hour (transcription).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. & Sheriff's Office & Studio Announcer).
8:05– 8:30 Birthday Greetings.
8:30– 8:45 Morning Devotions (Catholic Clergy: Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (transcription).
9:00– 9:15 News Flash.
9:15– 9:20 Local Weather Report Direct from Weather Bureau.
9:20– 9:30 Mother Goose (Electrical transcription & Various Mother's Clubs).
9:30– 9:45 Local Market Review.
9:45–10:15 Telegraph Herald Women's Institute.
425 10:15–10:45 Musical Requests (Chick Luckritz & His Luke Ritz Orch.).
10:45–11:15 Columbia College of the Air.
11:15–11:30 General Market Reports.

11:30–12:00 Rhythm Swing Music (Gus Fuhrman & His Swing Band).
12:00–12:15 News Flashes.
12:15–12:20 Tri-State Weather Forecast Direct from Weather Bureau.
12:20–12:30 Old Fashioned Melodies (Thesaurus).
12:30– 1:00 Grant County Farm Program (County Agent Walker).
1:00– 1:30 Organ Recital (Doris McCaffery).
1:30– 1:45 Book Review (Book Editor).
1:45– 2:00 Popular Piano Selections (Irma Sigman).
2:00– 2:15 Curb Reporter.
2:15– 2:30 Musical Matinee (transcription).
2:30– 2:45 Behind the Scenes.
2:45– 3:00 News Commentator.
3:00– 3:30 Grant County School Program (Supt. Ralph).
3:30– 4:00 German Band (Director Eichorn or transcription).
4:00– 4:05 Local Weather Forecast Direct from Weather Bureau.
4:05– 4:30 Closing Market Quotations.
4:30– 5:00 Clarke College of the Air.
5:00– 5:15 Sports Review and Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Children's Program (Electric transcription).
5:45– 6:00 News Flashes & Closing Weather Report.

FRIDAY

7:00– 8:00 Early Risers Hour (electrical transcription).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. & Sheriff's Office).
8:05– 8:30 Merry Melodies (transcription).
8:30– 8:45 Morning Devotions (Catholic Clergy: Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (transcription).
9:00– 9:15 News Flash.
426 9:15– 9:20 Local Weather Report Direct from Weather Bureau.
9:20– 9:30 Mother Goose (Electrical transcription & various other sources).
9:30– 9:45 Local Market Review.
9:45–10:15 Telegraph Herald Women's Institute.
10:15–10:45 Musical Requests (transcription).
10:45–11:00 Week-end Travel Suggestions (A. A. A., Mr. Rhoades).
11:00–11:15 Immaculate Conception Academy (Music; Art; Domestic Science).

11:15–11:30 General Market Reports.
11:30–12:00 Instrumental Music (Thesaurus).
12:00–12:15 News Flashes.
12:15–12:20 Tir-State Weather Forecast Direct from Weather Bureau.
12:20–12:30 Country Music.
12:30– 1:00 Jo Davies County Farm Program (Farm Advisor Brunnemeyer).
1:00– 1:30 Organ Concert (University of Dubuque).
1:30– 1:45 How Does Your Garden Grow? (Mrs. E. B. Lyons).
1:45– 2:00 Popular & Classical Piano Slections (Miss Marie Werdell).
2:00– 2:30 Bridge Party (Conducted and supervised by Mrs. Kleinsschmidt, Dubuque's Leading Authority on Bridge).
2:30– 2:45 Behind the scenes.
2:45– 3:00 News Commentator.
3:00– 3:30 Jo Davies County Schools (Supt. Burns).
3:30– 4:00 Luke Ritz Orchestra (Chick Lukritz).
4:00– 4:05 Local Weather Forecast Direct from Weather Bureau.
4:05– 4:20 University of Dubuque Educational Series (remote control).
4:20– 4:30 Musical Interlude (transcription).
4:30– 4:45 Elementary & Junior High Schools (E. D. Cline).
4:45– 5:00 Schroeder Violin Conservatory.
5:00– 5:15 Sports Review and Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Children's Program (electrically transcribed).
5:45– 6:00 News Flashes & Closing Weather Report.

SATURDAY

7:00– 8:00 Early Risers Hour (electrically transcribed).
8:00– 8:05 Safety Flash & Temperature Report (Police Dept. and Sheriff's Office).
8:05– 8:30 Merry Melodies (transcription).
8:30– 8:45 Morning Devotions (Catholic Clergy; Dubuque Ministerial Assn.).
8:45– 9:00 Organ Recital (Miss Martha Zehetner).
9:00– 9:15 News Flash.
9:15– 9:20 Local Weather Report Direct from Weather Bureau.
9:20– 9:30 Mother Goose (transcription).
9:30– 9:45 Local Market Review.
9:45–10:15 Telegraph Herald Women's Institute.

10:15–10:45 Musical Requests (Thesaurus).
10:45–11:15 Telegraph Herald Juvenile Talent Program (All public & parochial schools under direction of E. D. Cline and Msgr. J. A. Wolfe).
11:15–11:30 General Market Report.
11:30–12:00 Waltz Time (Bus Canfield and His Orchestra).
12:00–12:15 News Flashes.
12:15–12:30 Tri-State Weather Forecast Direct from Weather Bureau.
12:20–12:30 Local Hill-Billy Band.
12:30– 1:00 Clayton County Farm Program (County Agent Combs).
1:00– 1:30 Organ Recital (Miss Wilson).
1:30– 2:00 Fraternal Activities (Elks; Masons; K. of C.; American Legion; Veterans of Foreign Wars; K. of P.; Odd Fellows, etc.).
2:00– 2:15 Curb Reporter.
2:15– 2:30 Gus Fuhrman and His Swing Band.
2:30– 2:45 Behind the Scenes.
2:45– 3:00 News Flashes.
3:00– 3:30 Clayton County Schools (Supt. Mary E. Meyer).
3:30– 4:00 Your Government (National, State, and County—City Mgr. Roger E. Evans & Mayor Frank Jaeger).
428 4:00– 4:05 Local Weather Forecast Direct from Weather Bureau.
4:05– 4:30 Closing Market Quotations.
4:30– 5:00 Bus Canfield's Orchestra (Buster Canfield Director).
5:00– 5:15 Sports Review & Comment (Carl Wilhelm, Sports Editor).
5:15– 5:45 Mystery Series (Thesaurus).
5:45– 6:00 News Flashes & Closing Weather Reports.

3967—App. Ex. 5. 9/14/36

ADDITIONAL PROGRAM MATERIAL

Orchestras: All from Dubuque, Iowa

Ray Alderson.
Black & White.
Ed. Goodman.
Rudy Hafeman.
Al Schuster and His Tri-State Band.
Sweetheart Syncopators.
Bill Zumhof and His Orpheum Orchestra.

Aces of Melody, Shullsburg, Wisconsin.
Hal Burke, Dyersville, Iowa.
Roy Driscoll, Scales Mound, Ill.
Bill Rawson, Platteville, Wisc.
Columbia College Military Band, Sam Dovi, Director.
Columbia Academy Bank, Sam Dovi, Director.
Columbia College Concert Band, Sam Dovi, Director.
Dubuque Cadet Band, Sam Dovi, Director.
The Soprana Accordian Club, Vince Chewning, Director.
The Gibson Guitar Club, Harold La Barge, Director.
Wartburg Theological Seminary (Matin service every morning at 7:20 A. M. consists of hymns, responsive chanting, scripture lessons and prayer, periodic Vesper service on Sunday afternoons, bimonthly vesper service in German.)
Mrs. Janet Fritz, Violinist.
Miss Edith Groff, Pianist.
Mr. Wm. Galloway, Tenor Vocalist.
The Academy of the Visitation, Dubuque.
O. A. Reynolds, Activities of the Chamber of Comm.
Credit Rating Bureau.
Dubuque Traffic Association, S. G. Creswick.
Dubuque Humane Society.
Ada Hermann, Pianist.
Ed. Bacher, Xyllophone.
Carl Grabow, Recreational Director.
Miss Lucille Zahina, Pianist.
Miss Evelyn Carpenter, Pianist & Vocalist.
Vince Chewning, Accordian & Saxophone Soloist.
Elmer Schadle, Electric Hawaiian.
Clarence Zahina, Accordian.
Juanita Heim, Pianist.
Almeda Stonebraker, Music Teacher & Pianist.
Geo. Thalhammer, Accordian.
John Kirchen (Cascade), Violinist.
Joe Chevalier, Spanish Guitar Soloist.
429 Red Hittenmiller, Singing Cowboy; Guitar.
John Duffy, Coronet.
Robt. Winders, Trombone.
Delos Kemp, Clarinet.
Mary Grabo, Trombone.
Jos. Lambert, Alto Clarinet.
Martin Koenig, Trombone.
Philip Lochner, Trumpet.
Phillip Chamberlin, Saxophone.
Robert Didesch, Saxophone.
Robert Fosselman, Saxophone.
Geo. Hagge, Coronet.

Wm. Clemens, Jr., Saxophone.
Melvin Osterhaus, Trombone.
Violet Zapeski, Accordian.
Betty Jane Lyons, Saxophone.
Robt. Sullivan, Clarinet.
Jimmy O'Rourke, Accordian.
Kenneth Cullen, Alto Clarinet.
Chas. Sullivan, Accordian.
Mary Cunningham, Guitar.
Melvin & Leonard Renk, Guitar-Accordion Combination.
Cliff Healey, Coronet.
Cletus Althoff, Accordian.
Eldred Sprague, Coronet.
Mildred Kaiser, Guitar.
Finley Hospital Dietician.
Mercy Hospital Dietician. Care of Infants—Sunshine Circle—Finley Hospital.
City Librarian.

ACTUAL CONTACTS

Firm	Officer
J. F. Stampfer Co	Frederick F. Stampfer.
Mullen Bros	J. W. Lundin.
Edwards Style Shop	Ralph Ehrlich.
Juergens & Sons*	A. P. Jergens.
Dubuque Building & Loan Assn	H. R. Hangar.
Sommerfeld's Cleaners*	Fred Sommerfeld.
Hartman's Furniture Co.*	Carl Hartman.
Midwest Lumber Co.*	Joe Kopp.
Genz Stores	Ado Genz.
L. B. Wertz Meat Market	L. B. Wertz.
Interstate Power Co.	C. E. Dove.
Midwest-Timmerman Co.*	G. J. Timmerman.
Dubuque Star Brewery*	Joe Rhomberg (Dissatisfied with owners).
Belsky Motor Co.*	Max Belsky (Cost too high).
Grant Theatre Corp.*#	Melville Galliart.
A & P. Stores	C. J. May.
Kies Electric Inc.*	Peter Kies (Too costly).
Geisler Bros	A. P. Geisler.
Tradehome Shoe Store	L. G. Schaffert.
Firestone Service Station*	H. J. Nachtman.
City Meat Market	Ernie Pfalsgraf.
Mulligan Battery & Electric*	W. J. Mulligan.
Walgreen Co.	E. R. Laury.
R. Herrmann & Son Furniture*	Henry Hermann (Too expensive).
Leith Furniture Store*#	L. F. Kessler.
430 Packing House Market (WMT).	Mr. Katz (Did not produce quick sales).
Sherman's Pure Food Store	Benny Sherman.
Buy-Rite Stores*	R. Weirich (Results didn't warrant).
Styleez Shoe Store	Harry Bott.
E. M. Jaeger Hardware Co.*	Lester Schwimm (Dealer tie-up).
Jordan-Fields Clothing Co.*	Kirk A. Boggs (Spring Season).
Linehan & Molo*	Bart Molo.
Wards Market	Jay Ward.
Big Shoe Store	S. Swartz.

Firm.	Officer
The Parisian	Miss L. Dangelmeyer.
Kinney Shoe Store*	L. Kilbaus (Appropriation exhausted).
Nachtman's Market	August Nachtman.
Roehl-Phillips Furniture Co	Henry T. Roehl.
Kretz Cafeteria	E. R. Kretz.
Key City Gas Co	Chas. McLean.
Renier Music House*	Irwin Renier.
Landon Furriers*	Chas. Landon (Lacked coverage).
Model Wall Paper & Paint Co.*	L. Giegerich (Seasonal).
Ruprecht Bros.*	Al. Ruprecht (Time unsuited).
Lange Dying & Cleaning Works*	J. W. Lange (Time Unsuited & Service).
The Hub Clothiers*	Dalton Urbach (Unsatisfactory results).
Farley-Loetscher Mfg. Co	C. A. Ihrcke & Arnold Loetscher.
Holscher Apothecary*	G. H. Holscher.
Haltenhoff & Smith, Florists	Fred A. Haltenhoff.
Humke Bakery	O. Humke.
Crystal Ballroom	Roy Bartels.
Kassler Motor Co.*	Lewis Belsky.
Hartig Drug Co.*	Dave Hartig (One week).
Fitzpatrick Sporting Goods	W. E. Fitzpatrick.
Klauer Shoe Store*	Geo. M. Khauer.
Name	Officer.
Dubuque Tire & Batter Co	Chas. Reckord.
Sipbing Jewelry Store*	Nat. Tegunes (Seasonal).
Fuhrman-Triller Clothing	Fred Fuhrman.
Berg-Arduser Co., Jewelries	Harry Berg.
Montgomery-Ward*	E. J. Zinn (Joplin, Mo., station).
Golden Eagle*	Max Berk.
Kraft Clothing Store—*#	C. Goerdt.
Enzler Trunk & Luggage*	Joe A. Enzler (Used occasionally).
Iowa Wall Paper & Paint Co.*	Leo Hintgen (Seasonal).
Rhomberg Fur Co.*	Carl J. Rhomberg (Unsatisfactory results).

[Endorsed:] Docket No. 3967. App. Exhibit 6. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

431

3967 App. Ex. #7

Measurements made 40 miles West Dubuque, Ia., July 20th, 1936.

Station	Frequency	Distance	Time (P. M.)	Millivolts/Meter
WIND	560	220	1:00	.056
WMT	600	30	1:05	7.702
WTMJ	620	180	1:08	.110
WOI	640	110	1:12	.623
WMAQ	670	181	1:18	.540
WGN	720	178	1:22	.110
WBBM	770	183	1:25	.318
WCCO	810	175	1:30	.248
WENR	870	184	1:35	.225
WSAI	880	60	1:40	1.249
WHA	940	115	1:43	.062
WCFL	970	184	1:48	.040
WHO	1000	210	1:55	.045
WJJD	1030	184	1:59	.030
WIBA	1280	115	2:05	.055
WOC	1370	80	2:10	.028
WHBF	1210	85	2:14	.033
WKBB	1500	40	2:20	.165

Measurements made 20 Miles West Dubuque, Ia., July 20th, 1937.

Station	Frequency	Distance	Time (A. M.)	Millivolts/Meter
WIND	560	200	9:00	.080
WMT	600	41	9:05	4.250
WTMJ	620	165	9:08	.154
WOI	640	130	9:15	.355
WMAQ	670	166	9:18	.718
WGN	720	160	9:22	.678
WBBM	770	168	9:25	.330
WCCO	810	184	9:30	.240
WENR	870	164	9:35	.225
WSUI	886	65	9:40	.880
WHO	1000	130	9:43	.570
WJJD	1130	167	9:48	.101
WIBA	1280	96	9:51	.110
WKBB	1500	20	9:58	.880

432 Measurements made at West City Limits, Dubuque, Ia., July 18th, 1936.

Station	Frequency	Distance	Time (P. M.)	Millivolts/Meter
WIND	560	182	6:15	.189
WMT	600	56	6:17	2.850
WTMJ	620	148	6:19	.228
WOI	640	148	6:22	.235
WMAQ	670	140	6:24	1.090
WGN	720	134	6:27	1.010
WBBM	770	140	6:30	.640
WCCO	810	195	6:32	.208
WENR	870	147	6:34	.225
WSUI	880	68	6:36	.708
WHO	1000	748	6:40	.455
WIBA	1130	138	6:43	.190
WHBF	1280	78	6:45	.168
WOC	1210	74	6:48	.051
WKBB	1370	67	6:50	.045
	1300	4	7:00	9.350

433 Measurements made in Center of Dubuque, Ia., July 19th, 1936.

Station	Frequency	Distance	Time (P. M.)	Millivolts/Meter
WIND	560	181	5:00	.080
WMT	600	56	5:03	2.655
WTMJ	620	147	5:05	.255
WOI	640	149	5:07	.240
WMAQ	670	138	5:10	1.080
WGN	720	132	5:14	.800
WBBM	770	138	5:18	.630
WCCO	810	195	5:21	.188
WENR	870	145	5:25	.370
WSUI	880	70	5:28	.785
WAAF	920	166	5:32	
WHA	940	77	5:38	.160
WCFL	970	145	5:43	.080
WHO	1000	149	5:45	.235
WJJD	1130	135	5:48	.129
WIBA	1280	77	5:50	.189
WHBF	1210	72	5:53	.054
WOC	1370	63	5:55	.045
WKBB	1500	3.5	6:00	13.220

434 **Measurements made at East City Limits of Dubuque, Ia., July 19th, 1936.**

Station	Frequency	Distance	Time (P. M.)	Millivolts/ Meter
WIND	560	180	3:15	.137
WMT	600	57	3:18	2.650
WTMJ	620	146	3:21	.398
WOI	640	150	3:25	.235
WMAQ	670	137	3:30	1.095
WGN	720	131	3:33	1.021
WBBM	770	137	3:35	.805
WCCO	810	195	3:40	.159
WENR	870	144	3:43	.540
WSUI	880	70	3:45	.888
WAAF	920	165	3:48	.025
WHA	940	76	3:55	.090
WCFL	970	144	3:58	.089
WHO	1000	150	4:01	.268
WJJD	1130	138	4:05	.137
WIBA	1280	76	4:08	.219
WHBF	1210	72	4:12	.056
WOC	1370	65	4:16	.950
WROK	1410	86	4:20	.068
WKBB	1500	2	4:25	31.050

435 **Measurements made 20 Miles East of Dubuque, Ia., July 19th, 1936.**

Station	Frequency	Distance	Time (P. M.)	Millivolts/ Meter
WIND	560	150	1:15	.318
WMT	600	70	1:18	1.750
WTMJ	620	125	1:22	.410
WOI	640	170	1:25	.185
WMAQ	670	117	1:28	2.140
WGN	720	108	1:31	1.650
WBBM	770	117	1:35	1.210
WCCO	810	218	1:40	.095
WENR	870	124	1:48	.618
WSUI	880	70	1:52	.788
WAAF	920	124	1:56	.052
WHA	940	67	2:00	.255
WCFL	970	124	2:05	.118
WHO	1000	180	2:09	.[illegible]
WJJD	1130	103	2:14	.[illegible]
WIBA	1280	67	2:20	.275
WHBF	1210	70	2:25	.064
WOC	1370	65	2:30	.056
WROK	1410	65	2:33	.103
WKBB	1500	20	2:35	.815

436 Measurements made 40 Miles East of Dubuque, Ia., July 19th, 1936.

Station	Frequency	Distance	Time (A.M.)	Millivolts/Meter
WIND	560	140	10:05	.400
WMT	600	84	10:08	1.225
WTMJ	620	106	10:10	.650
WOI	640	190	10:12	.151
WMAQ	670	95	10:15	3.625
WON	720	90	10:18	2.650
WBBM	770	93	10:20	1.880
WCCO	810	232	10:25	.135
WENR	870	102	10:28	1.195
WSUI	880	91	10:31	.387
WAAF	920	124	10:35	.092
WHA	940	57	10:40	.298
WCFL	970	102	10:43	.221
WHO	1000	170	10:46	.238
WCBD	1080	100	10:51	.120
WJJD	1130	90	10:55	.448
WIBA	1280	56	10:59	.434
WHBF	1210	70	11:04	.061
WOC	1370	65	11:10	.036
WROK	1410	43	11:15	.290
WKBB	1500	40	11:20	.121

437 [Endorsed:] Docket No. 3967. App. Exhibit 8. Hearing before Federal Communications Commission 9/15/36 Ward & Paul, Official Reporters.

439 [Endorsed:] Docket No. 3967. App. Exhibit 9. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

Calculated Populations Within Service Areas of Proposed Station Dubuque Telegraph-Herald, Dubuque, Iowa

Field intensity mv/m	Radius miles	Population
10	7.5	51,300
2	18	81,000
0.5	35	136,320
0.25	48	292,900
0.1	70	681,530

[Endorsed:] Docket No. 3967. App. Exhibit 10. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

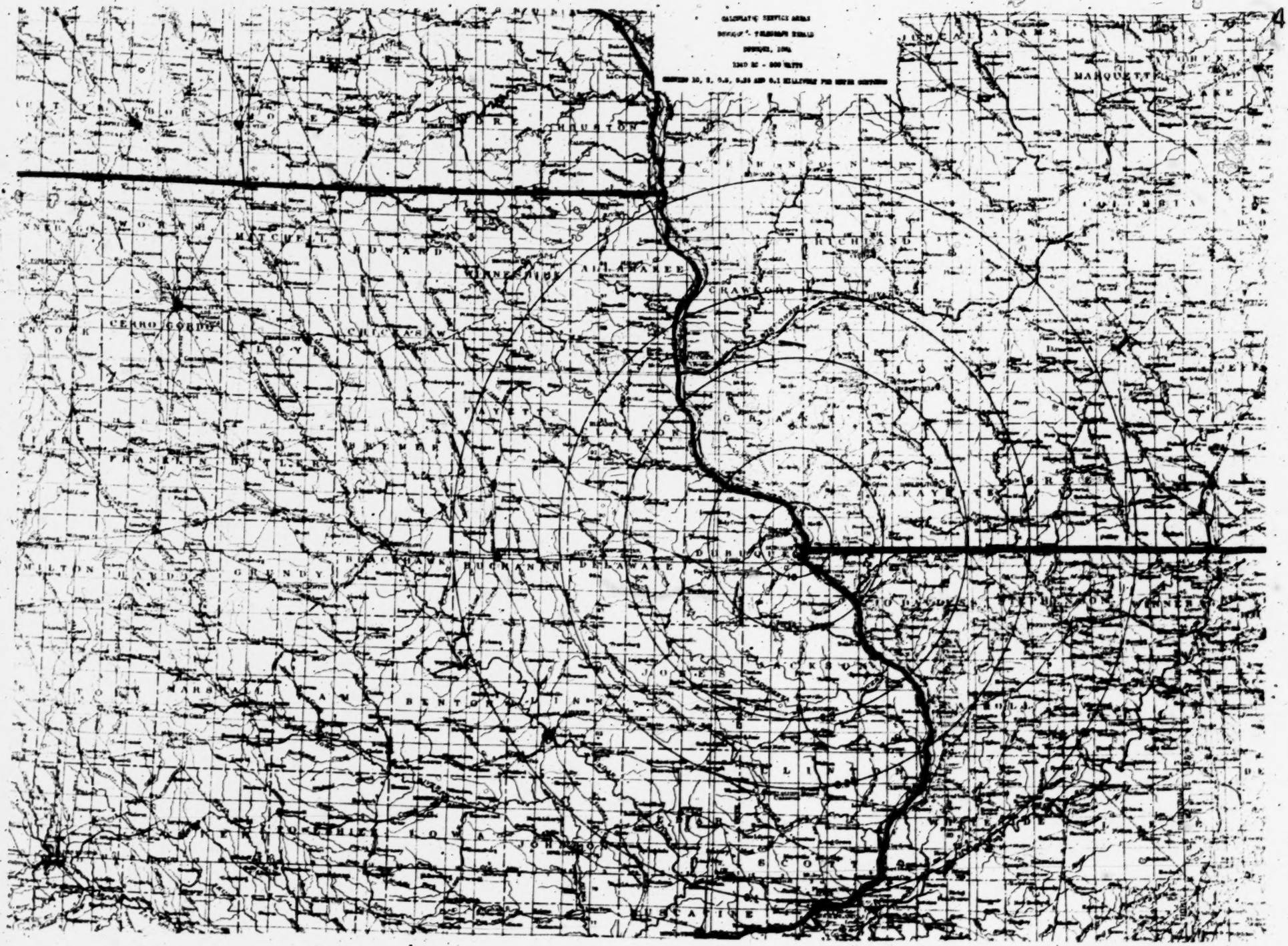

CALCULATED SERVICE AREAS
BROADCAST TELEVISION STATIONS
CHANNEL 10A
1240 KW - 600 METERS
CONTOURS 10, 5, 0.5, 0.25 AND 0.1 MILLIVOLTS PER METER (DASHED)
MARQUETTE
ADAMS
HOUSTON
WINNESHIEK
ALLAMAKEE
CLAYTON
CERRO GORDO
FLOYD
CHICKASAW
FAYETTE
CLAYTON
FRANKLIN
BUTLER
BLACK HAWK
BUCHANAN
DELAWARE
DUBUQUE
GRUNDY
MARSHALL
BENTON
LINN
JONES
JACKSON
CLINTON
SCOTT
MUSCATINE
LOUISA

Chart Showing Service Available From All Other Stations, Within the Area Which Will Be Served by the Station of the Dubuque Telegraph-Herald.

40 miles west 0.5 mv/m or greater	20 miles west 0.5 mv/m or greater	West city limits 2 mv/m or greater	Center of Dubuque 10 mv/m or greater	East city limits 2 mv/m or greater	20 miles east 0.5 mv/m or greater	40 miles east 0.5 mv/m or greater
WMT WOI WMAQ WSUI WHO	WMT WMAQ WSUI WHO WGN WKBB	WMT WKBB	WKBB	WMT WKBB	WMT WMAQ WSUI WGN WKBB WBBM WENR	WMT WMAQ WGN WBBM WENR WTMJ

440 3967 App. Ex. #11

WKBB Broadcast for September 6, 1936

Title broadcast period	Local talent	Transc.	A. B. C. network	Sponsor
Musical Clock		60 Min		McFadden Coffee.
On Wings of Song		15 Min		Quality Supply Co.
Secrets of Happiness		15 Min		Sustaining.
Musical Breakfast		15 Min		Lorenz Laundry.
Mother Clancey's Friends			15 Min	Sustaining.
Country Church			15 Min	Sustaining.
Transradio News	(Studio Announcer) 5.			Sustaining.
Carefree Capers		10 Min		Felix Becker.
Homemakers Program		15 Min		Sustaining.
Morning Musicale		15 Min	15 Min	T. J. Mulgrew Co.
Melody Lane			15 Min	Sustaining.
News	5 Min			Mulligan Battery.
Anson Weeks & Orch		10 Min		Sustaining.
Fashion Parade			15 Min	Sustaining.
Pianist			15 Min	Sustaining.
Little Miss Fixitup			15 Min	Sustaining.
Henry Waxman's Orch			30 Min	Hotel Julien & Schmitz & Kato.
Farm Flashes	Announ. 10 Min	5 Min		Sustaining.
Dental Talk	Announ. 5 Min	10 Min		Dub. Stone Prod.
World News Flashes	Announ. 15 Min			Appel's Crystal & Flynn Coal Co.
Man on the Street	Announ. 15 Min			Leath's Furnit.
Song Hit of the Day		5 Min		Kraft Clothing.
Pop Concert		10 Min		Sustaining.
Society News	Editor 5 Min	10 Min		Sustaining.
Mail Bag	Announ. 30 Min			Hill Top & Mulgrew Co.
Baseball			110 Min	Campana Co.
Henry Waxman Orch			10 Min	Sustaining.
Jane Harvey			15 Min	Sustaining.
Henry Waxman Orch			30 Min	Mathey Chevrolet.
Kids Next Door			15 Min	Sustaining.
Jack Durands Orch			15 Min	Melody Mill.
Stories in Song			15 Min	Sustaining.
Arthur Linder Orch			45 Min	Sustaining.
Old Lamplighter			15 Min	Carter Pills.
Uncle Tom		15 Min		Myers-Cox & La Fendrich Cigar.
Sport Review	Announ. 10 Min	20 Min		Patch Beverage Co.
Serenade		15 Min		Trausch Baking.
World Dances		15 Min		Sustaining.

WKBB Broadcast for September 6, 1936—Continued

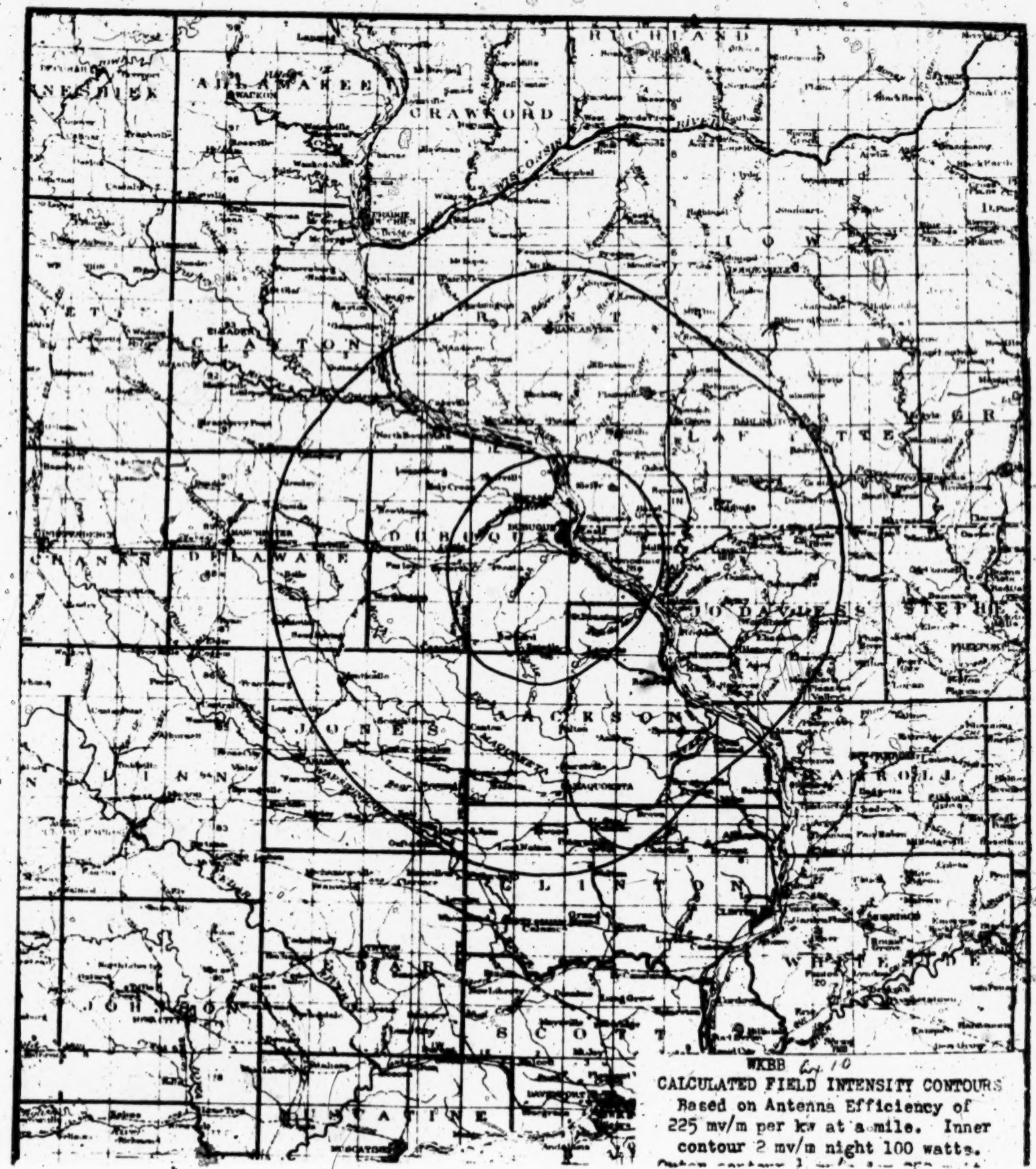
Title, broadcast period	Local talent	Transc.	A. B. C. network	Sponsor
Movie News	Announ. 2 Min			Avon, Strand, Grand.
World News Flashes	Announ. 13 Min.			Roshek Bros. Co.
Grant Park Concert			45 Min	Patch Beverage.
Rubinoff's Orch		15 Min		Melody Mill.
Cosmopolitan Quartett		15 Min		Sustaining.
John Dietz, Accordion	15 Min			Sustaining.
Dance			20 Min	Sustaining.
Earnie Palmquist & Orch.	40 Min			Melody Mill.
Mike & Ole			15 Min	Sustaining.
A. B. C. of the News			15 Min	Sustaining.
Earnie Palmquist & Orch.	30 Min			Melody Mill.

441 WKBB Broadcast for September 2, 1936

Slumber Music			15 Min	Sustaining
Organ			15 Min	Sustaining
Sign Off				
Total	170 Min	290 Min	300 Min	
Studio Announcer	115 Min			
Local Artist	15 Min			
Sponsored Orchestra	40 Min			
Percentage	18%	30%	52%	

[Endorsed:] Docket No. 3967. App. Exhibit 11. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

[Endorsed:] Docket No. 3967. App. Exhibit 12. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.



WKBB Exp. 10

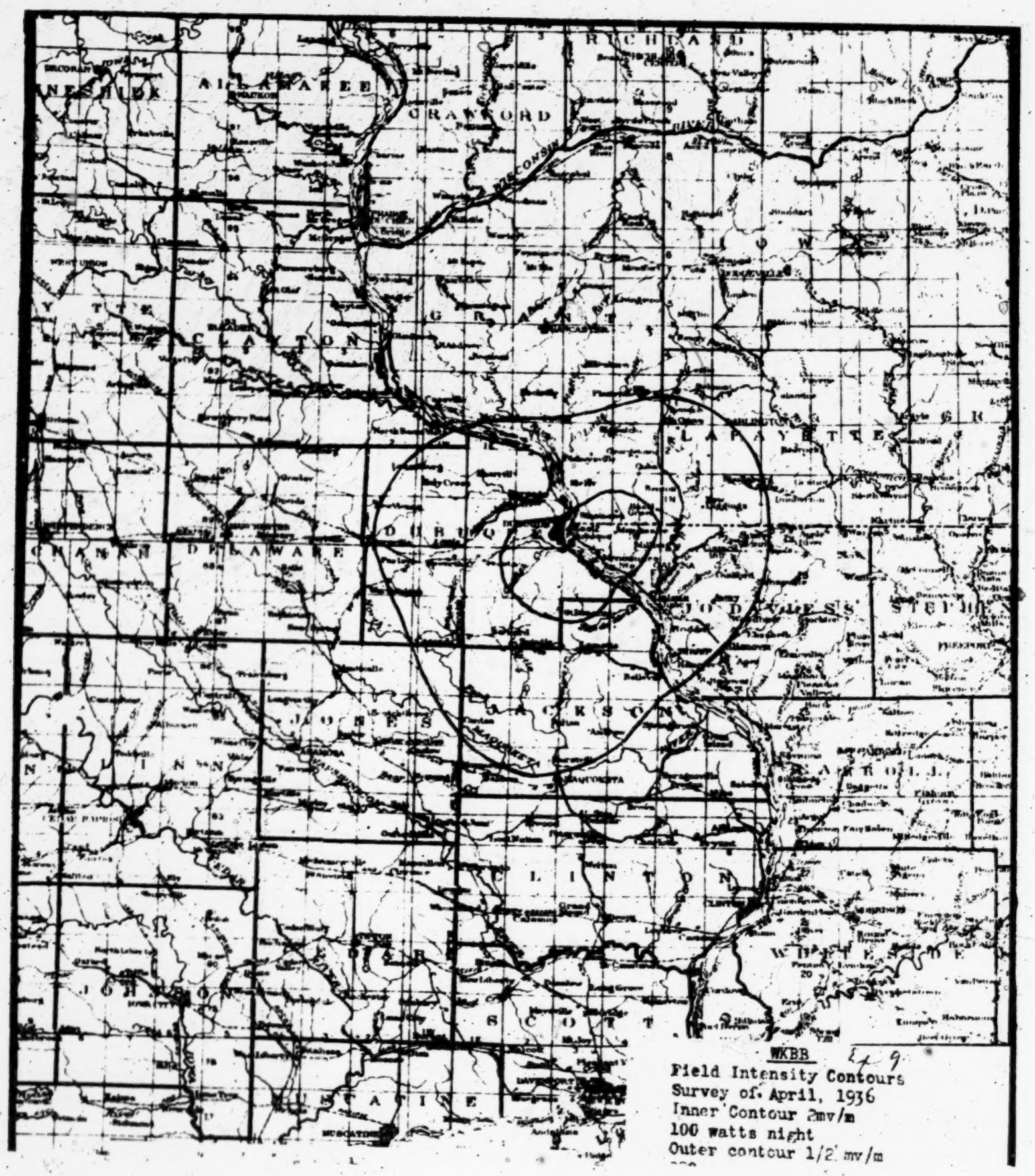
CALCULATED FIELD INTENSITY CONTOURS
Based on Antenna Efficiency of
225 mv/m per kw at a mile. Inner
contour 2 mv/m night 100 watts.

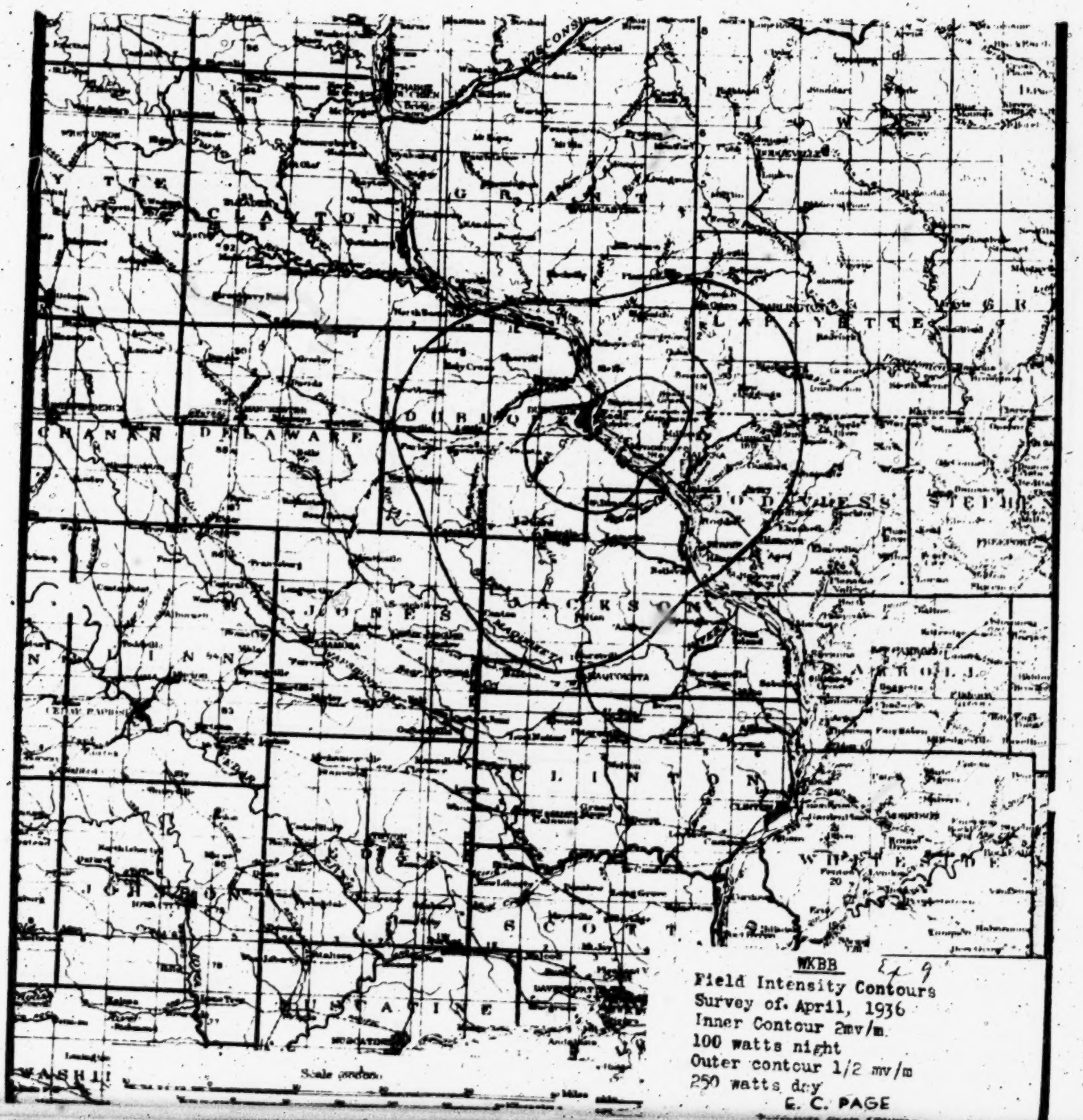
U.S. GOVERNMENT PRINTING OFFICE: 1938—O-2

WKBB Ex #10

CALCULATED FIELD INTENSITY CONTOURS
Based on Antenna Efficiency of
225 mv/m per kw at a mile. Inner
contour 2 mv/m night 100 watts.
Outer contour ½ mv/m day 250 watts.

E. C. PAGE


RICHLAND
CRAWFORD
WISCONSIN
CLAYTON
GRANT
LAFAYETTE
DELAWARE
JONES
JACKSON
CLINTON
SCOTT
WKBB
Field Intensity Contours
Survey of April, 1936
Inner Contour 2mv/m
100 watts night
Outer contour 1/2 mv/m



WKBB

Field Intensity Contours
Survey of April, 1936
Inner Contour 2mv/m.
100 watts night
Outer contour 1/2 mv/m
250 watts day

E. C. PAGE

U. S. GOVERNMENT PRINTING OFFICE: 1938—O-280811

WKBB Broadcast for September 6, 1936

Title broadcast period	Local talent	Transc.	A. B. C. network	Sponsor
United Church Service	30 Min			Sustaining.
Funnies			30 Min	Sustaining.
Melody Parade		60 Min		S. A. Hill Top & Prophetic Taber.
Young Artists			15 Min	Sustaining.
Loomis & Piers			15 Min	Sustaining.
First Aid			15 Min	Sustaining.
World Show		15 Min		Sustaining.
Americana	3 Min	27 Min		Sustaining.
Baseball			240 Min	Campana.
News Come to Life			30 Min	Remington-Rand.
Baseball			30 Min	Campana.
Let's Go Places		30 Min		Eagle Garage, Platte Cole Co., Dyersville
World Entertains		30 Min		S. A. Melody Mill.
Serenade			30 Min	Mathey Chev. Larson Bros. & Melloy.
Grant Park Concert			45 Min	Grand-Strand-Avon.
Dance Orchestra			15 Min	Melody Mill.
Echoes of the Stage		30 Min		Sustaining.
Ted Wayne	15 Min			Melody Mill.
Bedtime Stories			15 Min	Sustaining.
Ted Wayne	15 Min			Melody Mill.
Symphony Orchestra			15 Min	Sustaining.
Dance Orchestra			15 Min	Sustaining.
Ted Wayne	15 Min			Melody Mill.
Dance Orchestra			15 Min	Sustaining.
Fate			15 Min	Sustaining.
Slumber Music			15 Min	Sustaining.
Organ, Jane Harvey			15 Min	Sustaining.
Sign Off				
Total	78 Min	192 Min	570 Min.	
Percentage	9%	23%	68%	

443 [Endorsed:] Docket No. 4031. WKBB Exhibit 9. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

445 [Endorsed:] Docket No. 4031. WKBB Exhibit 10. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

447 [Endorsed:] Docket No. 4031. WKBB Exhibit 11. Hearing before Federal Communications Commission 9/15/36. Ward & Paul, Official Reporters.

POPULATION DATA

Number of Inhabitants Residing within Certain Contours of WKBB

	Ill.	Wis.	Iowa	Total
½ mv.—Daytime—250 watts—Present location	10, 117	11, 500	73 369	94, 986
2 mv.—Nighttime—100 watts—Present location	4, 750	2, 235	43, 944	50, 929
½ mv.—Daytime—250 watts—Proposed location	15, 175	35, 000	103, 838	154, 013
2 mv.—Night—100 watts—Proposed location	6, 900	2, 850	49, 127	60, 725

County	State	Population	Distance from Dubuque to Center to Extreme Edge
Dubuque	Iowa	61, 214	10 miles 27 miles
Delaware	Iowa	18, 122	35 " 49 "
Jones	Iowa	19, 206	35 " 52 "
Jackson	Iowa	28, 481	25 " 40 "
Clayton	Iowa	24, 559	43 " 63 "
Grant	Wisconsin	38, 469	25 " 50 "
Lafayette	Wisconsin	18, 649	35 " 48 "
Iowa	Wisconsin	20, 036	41 " 65 "
Jo Daviess	Illinois	20, 235	22 " 43 "
Carroll	Illinois	18, 433	48 " 65 "
Stephenson	Illinois	40, 064	55 " 69 "

448 [Endorsed:] Docket No. 4031. WKBB Exhibit 12. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Daytime service at Dubuque, Iowa measured April 9, 1936

Station	Frequency	Intensity MV/M	Station	Frequency	Intensity MV/M
KSTP	1, 460	012	WBBM	770	.420
KSO	1, 430	038	WGN	720	1. 080
WOC	1, 370	103	WLW	700	.057
WIBA	1, 280	490	WMAQ	670	1. 450
W??	1, 210	030	WOI	640	.257
WJJD	1, 130	225	WTMJ	620	.267
WCBD	1, 080	052	WMT	600	2. 620
WHO	1, 000	527	WOW	590	.039
WGES	970	085	WNA	570	.052
WENR	870	268	WIND	560	.358
WCCO	810	018			

At this point WKBB 1500 kc. 17.5 MV/M.

449. [Endorsed:] Docket No. 4031. WKBB Exhibit 13. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Sanders Brothers Broadcasting Station, Balance Sheet as at August 31, 1936

Current Assets:		
Cash		5,874.65
Accounts Receivable	11,144.31	
Less Reserve For Bad Debts	2,509.23	8,635.08
Fixed Assets:		
Automobile	1,036.00	
Less Reserve for Depreciation	663.00	373.00
Real Estate (Land)		1,300.00
Building Transmitter	3,750.00	
Less Reserve for Depreciation	468.75	3,281.25
Transmitter Building Furniture and Fixtures	3,857.97	
Less Reserve for Depreciation	1,000.00	2,857.97
Studio Furniture	1,418.87	
Less Reserve for Depreciation	300.00	1,118.87
Furniture and Fixtures	609.40	
Less Reserve for Depreciation	152.35	457.05
Transmitter and Towers	16,700.00	
Less Reserve for Depreciation	10,437.50	6,262.50
Remote-Control Equipment	2,000.00	
Less Reserve for Depreciation	1,750.00	250.00
		30,410.37
Current Liabilities:		
Accounts Payable		8,206.27
Accounts Payable (W. E. Klauer)		1,845.23
Capital Stock	23,000.00	
Surplus Deficit	4,641.13	20,358.87
		30,410.37

450 [Endorsed:] Docket No. 4031. WKBB Exhibit 14. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Sanders Brothers Broadcasting Station, Profit and Loss Statement for Eight-Month Period Ended August 31, 1936

Time Programs		21,858.74
Less Allowances		405.17
Total Income from Broadcasting		21,453.57
Operating Expense:		
Salaries	8,684.50	
Fuel	312.87	
Light and Power	415.33	
Traveling Expense	596.63	
Dues and Subscriptions	9.75	
Music and Records	1,070.97	
News Service	1,143.77	
Freight	4.19	
Water Service	12.00	
Advertising and Sales Promotion	122.50	
Maintenance and Repairs	575.94	
Office Supplies	145.32	
Insurance	33.08	
Telegraph and Telephone	649.94	
Taxes	54.11	
A. S. C. A. P., Etc	983.51	
Legal Expense, Etc	1,732.49	16,546.90
Net Profit from Broadcasting		4,906.67

Sanders Brothers Broadcasting Station, Profit and Loss Statement for Eight-Month Period Ended August 31, 1936—Continued

Other Expense:		
Depreciation	2,894.72	
Reserve for Bad Debt Losses	2,487.23	5,381.95
Net Loss		475.28
Surplus:		
December 31, 1935, Deficit		4,165.85
August 31, 1936, Deficit		475.28
		4,641.13

451 [Endorsed:] Docket No. 4031. WKBB Exhibit 15. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Estimated Cost of Moving WKBB From East Dubuque, Illinois, to Dubuque, Iowa

Tower	$4,000.00
Ground	500.00
Building	5,000.00
Land [1]	3,000.00
Land Improvements	1,000.00
Moving and Installation of Equipment and Fixtures	1,500.00
Total	$15,000.00

[1] Undetermined whether land will be purchased or leased.

[Endorsed:] Docket No. 4031. WKBB Exhibit 16a. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

WKBB Personnel

President, W. E. Klauer; Vice President, W. H. Klauer; Secretary, E. A. Deutmeyer; Treasurer, J. D. Carpenter; Program Director, Gilbert H. Forbes; Continuity Director, Arthur S. Jones; News Editor, A. M. Link; Chief Engineer, Leonard Carlson; Bookkeeper, Marianne Steinbach; Announcers, Gilbert H. Forbes, Arthur S. Jones; Engineers, Leonard Carlson, Leon Braulin, Stanley Beek; Copy Writers, A. M. Link, Gilbert H. Forbes, Arthur S. Jones; Society Editor, Marianne Steinbach; Stenographer, Ethel Carpenter; Sales; W. E. Klauer, J. D.
452 Carpenter, Arthur S. Jones; Staff Musical Talent, Gilbert H. Forbes, Arthur S. Jones, Mariam Moser, Eileen Kaizer, Ethel Carpenter.

[Endorsed:] Docket No. 4031. WKBB Exhibit 18. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Network and Local Program Division, Aug. 30th to Sept. 12th

Total Time, 220 hours.
"ABC" Network, 126:05 hours—57%.
Local, 93:55 hours—43%.
(E. Dubuque Studio, 52:45 hours—24%.)
(Dubuque Studio, 41:10 hours—19%.)
[Endorsed:] Docket No. 4031. WKBB Exhibit 19. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Talent and Transcription Analysis, Aug. 30th to Sept. 12th inc. (two weeks)

"Live" Talent, 161:45 hours—73.5%.
Transcriptions, 32:50 hours—14.9%.
Phonograph Records, 25:25 hours—11.6%.
Total, 220 hours—100.0%.
[Endorsed:] Docket No. 4031. WKBB Exhibit 20. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Program Analysis, Aug. 30th to Sept. 12th (inc.) (two weeks)

Popular Music, 67:35 hours—30.7%.
Sports, 34:10 hours—15.5%.
Semi-Classical Music, 29:35 hours—13.4%.
News, 18:55 hours—8.6%.
Educational (Exclusive), 17:55 hours—8.2%.
Dramatics, 14:45 hours—6.7%.
453 Classical Music, 12:20 hours—5.6%.
Children's programs, 6:00 hours—2.7%.
Religious programs, 4:15 hours—1.9%.
Folk Music, 3:45 hours—1.8%.
Farm (Exclusive), 2:45 hours—1.3%.
Civic, Special Events, and Miscellaneous, 8:00 hours—3.6%.
Total, 220 hours—100%.
[Endorsed:] Docket No. 4031. WKBB Exhibit 21. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Commercial Analysis, Aug. 30th to Sept. 12th inclusive (two weeks)

Number of quarter hours operated, 880.
Number of quarter hours sponsored, 269.
Number of spot announcements, 250.

Actual time consumed by commercial copy, 13:01 hours.
Percent of time consumed by commercial copy, 6%.
[Endorsed:] Docket No. 4031. WKBB Exhibit 22. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

WKBB Program Analysis, April 1 to Sept. 12, 1936

Days Operated—165.
Hours Operated—2,561 (test programs not included).
Daily Average—15½ hours.
Present Operating Schedule:
Weekdays—16 hours—7:00 A. M. to 11:00 P. M.
Sundays—14 hours—9:00 A. M. to 11:00 P. M.

Number of Educational Programs Broadcast—834

Organization broadcasts, 126 quarter hours—including Y. M. C. A.; C. Y. O.; Hull House; Field Museum; University of Chicago; Household Science Institute, etc.

Health Talks, 28 quarter hours—made by local doctors and dentists.

454 Parent-Teachers Assn., 19 quarter hours—11 local by Mrs. Raymond French and 8 over ABC.

Americanism programs, 8 quarter hours—conducted by American Legion Americanism Committee; contest among high school students for best speakers on subject.

First Aid programs, 20 quarter hours—a once-a-week feature giving timely instruction in home treatments.

Homemakers' programs, 142 quarter hours—timely advice on interior decoration, household problems, etc.

Fashion Parade, 126 quarter hours—discussions of style trends and advice on purchases, etc.

Book reviews, 21 quarter hours—reviews of current "best sellers."

Dubuque history and travel, 15 quarter hours—reminiscences of Bertha Lincoln Huestis.

Weather Bureau, 142 five-minutes—complete weather reports and forecasts for tri-state area, river forecast and bulletins.

World Bookman, 142 five-minutes—discussions of timely topics and odd facts.

Humane Society, 5 five-minutes—discussions of animals during Humane Week.

Civic Music Association, 4 ten-minutes—explanation of association and talks on music appreciation.

Navy Programs—semi-weekly talks by recruiting officer.

"Special Day" programs, 2 half hours, 1 hour, 5 quarter
455 hours—Flag Day, ½ hour; Memorial Day, 1 hour; Grand Army Day, ¼ hour; Close of public schools, two ¼ hours; Close of parochial schools, two ¼ hours; Fourth of July, ½ hour.

Miscellaneous, 23 quarter hours—talks by: City Manager Evans; Chief of Police Gillies; City School Superintendent E. D. Cline; Prof. A. C. Kleine; County School Superintendent Thos. Flynn; University of Dubuque, President Dale Welch; Dr. Connell, of City Health Dept.; Archdiocesan Superintendent of Schools, Monsignor Wolfe; Principal of Senior High School, R. W. Johnson; Prominent musician, Martha Zentner; Prof. Schroeder, of Schroeder School of Music; C. E. Rhodes, President of Safety Council; King Herr, of Safety Council; Father Martin, Columbia Academy; A. A. Morr, Principal of Junior High School; N. J. Logan, Prof. of Music of University of Dubuque; Samuel S. George, of University of Dubuque, Assistant to President.

Number of Farm Programs Broadcast—142

Talks by county agent, 23 quarter hours; Material supplied by U. S. Dept. of Agriculture, Iowa State Extension Service, and Illinois and Wisconsin Depts. of Agriculture, 107 quarter hours, 12 half hours.

Number of Religious Programs Broadcast—198

Studio services, united services, etc., 168 quarter hours, 26 half hours, 3 hours, 1 three-hours.

456 Civic Affairs, Interviews, and Public Service—325 (approx.) (exclusive of farm, religious, and educational)

Man on the Street, 142 quarter hours—interviews with citizens and expressions of local opinions.

Club News and Social Calendar, 120 quarter hours—social activities of residents and church, fraternal, and civic clubs' activities.

Arrival of "Green Diamond," 1 quarter hour, 1 half hour—broadcasts from train platform to 5,000 people, including address by Gov. Herring.

Senator Murphy Memorial Service, 1 hour—talks by Sen. David I. Walsh, of Mass.; Sen. Wm. Dietrich, of Illinois; Sen. Ryan Duffy, of Wisconsin; Rep. M. J. Gaughn, of Delaware County; Gov. Clyde L. Herring, of Iowa; Lt. Gov. Hels Kraschel, of Iowa; State Rep. Eugene H. Reilly, of Dubuque; U. S. District Attorney Edward G. Dunn, of Mason City; Speaker of

House John H. Mitchell, of Ft. Dodge; Judge Utterbach, 6th District Rep.

Western Open Golf Finals, 1 hour—broadcast direct from Davenport.

American Legion, 9 quarter hours—regular weekly broadcasts until summer.

Police Headquarters, no complete record—daily contact with department and broadcast of accidents, deaths, missing persons, stolen property, etc.

Sheriff's Office, no complete record—daily contact with department and broadcast of accidents, deaths, missing persons, stolen property, etc.

Conservation week in Illinois, 6 quarter hours—broadcasts by Gov. Horner and Department of Conservation.

City Rescue Mission, through Rev. Masters, many appeals have been broadcast.

457 Visiting Nurse Association, no definite record—complete cooperation on any health campaigns.

Visitation Academy—station's facilities offered to be used to raise money or disseminate information in any way following disastrous fire.

Ministerial Association—complete cooperation with association's radio committee in broadcasting services.

Dubuque Women's Club—special ¼ hour programs on each day of national importance such as Constitution Day, Discovery Day, etc.

Humane Society—daily programs during Humane Week.

Notre Dame Alumni—annual broadcast.

Mobilization for Human Needs—complete cooperation.

Red Cross—complete cooperation.

Weather Bureau—special hourly broadcasts during extreme weather.

Y. M. C. A. and C. Y. O.—special weekly programs.

Farm Bureau Picnic and Dance—remote broadcast.

Athletic Events—basketball and football games of local High School and Columbia College, also University of Iowa.

Local Sports News—daily review and interviews with sports celebrities of baseball, boxing, wrestling, golf, and tennis.

Number of Children's Programs—425

Air Adventures of Jimmy Allen.

Tenderfoot.

Kids Next Door.

478 Uncle Tom.

Reading and dramatization of the comic strips.

Saturday contest.

Number of News Broadcasts—982

Regular news periods for local and national news—four periods daily (except Sunday)—two five-minute morning periods, one noon-hour period and one evening period.

Daily period of dramatization of humorous incidents from the day's news.

Daily quarter hour of club and social news.

Daily news of sports.

Half-hour news dramatization each Sunday.

Numerous special broadcasts of news from police and sheriff's headquarters.

[Endorsed:] Docket No. 4031. WKBB Exhibit 24. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Programs Analysis, April 1 to Sept. 12, inclusive

Popular Music, 28.2%. This includes all programs which were predominantly popular in nature, including such shows as the daily musical-clock feature which carri's time signals, weather forecasts, news bulletins, and martial music. That program is one hour in length and the whole hour was charged against this classification.

Semi-Classical Music, 14.1%.

Classical Music, 6.5%.

Folk Music, 2.4%. This includes hillbilly, cowboy, foreign, etc.

Sports Events, 12.5%.

News, 8.5%.

Drama, 7.6%.

Educational (exclusive), 6.2%.

Civic and Special Features, 6.5%.

Children's Features, 3.6%.

Religious, 2.4%.

Farm Broadcasts (exclusive), 1.5%.

459 [Endorsed:] Docket No. 4031. WKBB Exhibit 26. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

WKBB Accounts in 1936

Avon Theater.

Appel Cleaners.

Appel-Higley Electric Co.

Becker Warehouse.

Bee Line Transfer Company.

Black & White Cab Company.

Bunker Hill Golf Course.
Felix G. Becker Coal Company.
Belsky Motor Company (Buick & Pontiac Dealer).
Crescent Electric & Supply Co. (GE Dealer).
Dubuque Implement Company.
Dubuque Retail Merchants Assn.
Dubuque Stone Products Company.
Feller Upholstery Company.
Farmers Supply Company.
Family Shoe Store.
Flynn Coal Company.
Flynn Oil Company.
Geisler Bros.
Goodman Jewelry Company.
Grand Theater.
Hartman Furniture Company.
Herrman Furniture Company.
Hill Top Casino.
Honolulu Conservatory.
Ideal Pastry Shop.
International Harvester Co.
Illinois Central Railroad.
Iowa Dairy Company.
Jordan & Fields.
Kassler Motor Company (Chrysler and Plymouth Dealer).
Kinney Shoe Store.
Klein Hardware Company.
Kraft Clothing Company.
Landon Fur Company.
Lange Cleaners.
Leath & Company.
Lorenze Laundry & Dry Cleaning Co.
Max Berk Store.
Meyers Cox Cigar Company.
Melody Mill.
Mid-West Timmerman Company.
Model Wall Paper & Supply Co.
T. J. Mulgrew Company (Skelly & Coolerator distributor).
Mulligan Battery Company.
McFadden Coffee and Spice Company.
Northwestern Bell Telephone Co.
Orpheum Theater.
Patch Beverage Company.
Peoples Store.
Rainbo Oil Company.

Rhomberg Fur Company.
Roshek Bros. Company.
Sanitary Milk Company.
Shereer Bros. Company.
Sneider Drug Company.
J. F. Stampfer Company.
Trausch Baking Company.
Triangle Hatchery.
Tri States Motor Company.
Julien Dubuque Hotel.
Linpark Clothing Company.
DeMaio Brothers Shoe Company.
Walzer Rapid Transit Company.
Wilberding Tailors.
Strand Theater.
Mathey Chevrolet Company.
Home Supply Co.

[Endorsed:] Docket No. 4031. WKBB Exhibit 27. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

Past WKBB Contracts

Baul's Stores.
B & G Battery Company.
Big Shoe Store.
Buy Rite Grocers.
Central Battery Company.
College Inn.
Coast to Coast Stores.
Coca Cola Company.
Conlon Hudson Essex Company.
Conlin & Kearns Company.
Consumers Coal Company.
Corbett & Scott.
Curtiss-Straub Company.
Dubuque Bakers Association.
Dubuque Seed Company.
Dubuque Star Brewery.
Dubuque Tire & Battery Company.
Dubuque Welding Works.
Eisenberg Tavern.
Engle-Nash Company.
Engle Flanders Company.
Enzler Luggage Company.
Erie Cafe.

Falkanheiner Drug Company.
460 Fischer Ice Company.
Fluckiger Motor Co. (Dodge & Plymouth dealers).
Fosselman Jewelry Company.
Gross Sausage Shop.
Hartig Drug Company.
Hawkeye Battery Company.
Henschel Hardware Company.
Hub Clothiers.
Iowa Shoe and Clothing Company.
Jonas Beauty Shop.
Justman Sheet Metal Company.
Jurgens Paint Company.
Key City Gas Company.
Kies & Butler Jewelry Company.
Kirchoff Confectionery.
Klauer Shoe Company.
Klein Garage.
Wm. R. Kolch Company.
Kretchmer-Tredway Company.
LaFlorence Beauty Shop.
Geo. LaPrell Packing Company.
Leisers Beverage Company.
A. Y. McDonald Manufacturing Company.
Melo Cream Doughnuts.
Midwest Lumber Company.
Molo Oil Company.
Montgomery-Ward.
Mullen Bros. & Co.
Muntz, Florist.
McKeever & Hardie.
Neisner's Bros.
Newkirk's Service Station.
NuEnamel Store.
O'Meara Cheese Store.
Peryon Drug Company.
Geo. Rath & Son.
Remier Music Store.
Roehl-Phillips Company.
Roseblossom Beauty Shop.
Roxy Dress Shop.
Ruprecht Bros. Company.
Schaetzle Drug Company.
Scheppele Jewelry Company.
Shinner Meat Market.

Sibbings Jewelry Company.
Sommerfield Cleaners.
Spahn-Rose Lumber Company.
Sutters Bakery.
Trenkles Sausage Company.
Tru-Value Dress Shop.
Upton Laundry.
Weber Furriers.
Zillig Drug Company.
[Endorsed:] Docket No. 4031. WKBB Exhibit 28. Hearing before Federal Communications Commission 9/16/36. Ward & Paul. Official Reporters.

Prospective Advertisers Never Having Used WKBB

* * * * * * *

A & P Food Stores.
Bueler Bros. Market.
Didesch Funeral Home.
Dubuque Awning and Tent Co.
Dubuque Packing Co.
Diamond Cafeteria.
Edward's Style Shop.
Eglehof Funeral Home.
Federal Bakery.
Fitzpatrick Sporting Goods Store.
Fuhrman-Triller Co.
Genz Stores.
H. B. Glover Co.
Hoffman Mortuary.
Huebsch Funeral Home.
Humke Bakery.
Iowa Oil Company.
461 Jack Spratt Food Stores (Western Grocer Co.).
Johnson High Test Oil Company.
Katz Market.
S. S. Kresge Company.
Kretz Cafeteria.
Mollie's Market.
National Tea Company Stores.
Nachtman Groceries & Meats.
O'Hearn Markets.
J. C. Penney Company.
The Parisian Shop.
Sherman's Pure Food Stores.
Schrupp Motor Car Co. (DeSoto & Plymouth dealer).
L. B. Wertz Market.

White House Biscuit Co.
Zehentner Market.

[Endorsed:] Docket No. 4031. WKBB Exhibit 29. Hearing before Federal Communications Commission 9/16/36. Ward & Paul, Official Reporters.

WKBB Local Advertising Rates

Time Rates:

1. Morning—8:00 to 11:00 A. M.:	
Hour	$20.00
½ hour	13.00
¼ hour	6.50
2. Noon and afternoon—11:00 A. M. to 5:00 P. M.:	
Hour	25.00
½ hour	15.00
¼ hour	8.00
3. Evening—5:00 to 11:00 P. M.:	
Hour	30.00
½ hour	17.50
¼ hour	10.00
4. Time discounts:	
26 times	10%
100 times	15%
Consecutive yearly	25%

462 Announcement Rates:

1. Morning	2.00
Noon and afternoon	2.50
Evening	3.00
2. Discounts—use of 26 in period of one month:	
Morning	1.25
Noon and afternoon	1.50
Evening	1.75

Talent:
1. Talent charges are additional.

Remote Pickups:
1. Rates on application.

Political Rates:
1. "General Rates" as published in Radio Advertising Standard Rate and Data Service apply to political programs or announcements.

This report is not final but is subject to approval, modification or rejection by the Commission.

The parties to the proceeding have fifteen days, with the exception of those from the Fifth Zone who have twenty days, in which to file objections or exceptions, if any, to the report.

Federal Communications Commission, Washington, D. C. 1895

Examiner's Report No. I-340

Docket No. 3967

In re Applications of Telegraph Herald (New), Dubuque, Iowa. For Construction Permit.

Assignment Requested: Frequency, 1340 kc. Power, 500 watts. Hours of Operation, Daytime.

463 Docket No. 4031

Sanders Brothers Radio Station (WKBB), East Dubuque, Illinois. For Construction Permit to Move Studio and Transmitter to Dubuque, Iowa, and Install New Antenna.

Assignment Requested: Frequency, 1500 kc. Power, 100 watts, 250 watts LS. Hours of Operation, Unlimited.

Report of John P. Bramhall, Examiner

Notices were issued by the Federal Communications Commission in Dockets Nos. 3967 and 4031 under dates of August 7 and July 23, 1936, respectively, and mailed to each of the applicants herein and all other persons and concerns whose interests might be adversely affected, designating September 14, 1936, at 10:00 a. m. in the offices of the Commission at Washington, D. C., when and where the above applications were to be heard, and the hearing was accordingly commenced at the time and place provided in the respective notices, and before an Examiner duly appointed by the Commission.

Appearances: Eliot C. Lovett on behalf of the Telegraph Herald; Louis G. Caldwell and Reed T. Rollo on behalf of Sanders Brothers Radio Station; Horace L. Lohnes and E. D. Johnston on behalf of Station WSPD; Tyler Berry on behalf of the Commission.

PRELIMINARY STATEMENT

Docket No. 3967

On January 20, 1936, the Telegraph Herald of Dubuque, Iowa, filed an application with the Federal Communications Commission, seeking a permit for a broadcast station to be constructed at Dubuque. The application as thus filed was designated for hearing for the following reasons:

464 1. To determine the legal, technical, financial, and other qualifications of the applicant to construct and operate the proposed station.

2. To determine the need for additional daytime service in the area proposed to be served.

3. To determine whether the application may be granted within the purview of Section 307 of the Communications Act of 1934, as amended by the Act of June 5, 1936 (Senate Bill 2243).

4. Because of the pendency of another application with which conflict may be had by reason of interference, i. e., from Clinton Broadcasting Company (Emmons L. Abeles, Secretary) (B4–P–

687); and from Stanley Reid & Charles Withnell Boggel, Jr., d/b as The Rapids Broadcasting Co. (B4–P–965).

5. To determine whether the applicant will be required to mark the towers in accordance with the engineering specifications as contemplated by Section 303 of the Communications Act of 1934.

6. To determine whether the site at which the applicant proposes to construct and operate the station will be satisfactory.

7. To determine whether the granting of the application will serve public interest, convenience, and necessity.

Docket No. 4031

On May 14, 1936, Sanders Brothers Radio Station, East Dubuque, Illinois, filed an application with the Federal Communications Commission, requesting a permit to move studio and transmitter to Dubuque, Iowa, and install a new antenna. The application as thus filed was designated for hearing for the following reasons:

1. To determine the need for additional service in the area proposed to be served.

2. To determine whether the application may be granted within the purview of Section 307 of the Communications Act of 1934, as amended by the Act of June 5, 1936 (Senate Bill 2243).

3. Because of the pendency of other applications with which conflict may be had by reason of interference, i. e., Appleton Broadcasting Co. (Emmons L. Abeles, Secretary), (B4-465 P–691); Chicago Broadcasting Association, Limited Partnership; Kleofas Jurgelonis, General Partner; Joseph F. Budrick, Laurent V. Radkins, Vladas G. Jurgelonis, Limited Partners (B4–P–509); Robert Raymond McCulla (B4–P–854); Winona Broadcasting Company (Emmons L. Abeles, Secretary) (B4–P–684); and Howard A. Mifler (B4–P–1159).

4. To determine whether the site at which the applicant proposes to construct and operate the station will be satisfactory.

5. To determine whether the antenna which the applicant proposes to use will comply in all respects with the Rules and Regulations of the Commission, particularly Rule 131, and will render proper service.

6. To determine whether the granting of the application will serve public interest, convenience, and necessity.

This proceeding involves two applications, one requesting a construction permit at Dubuque, Iowa, and the other requesting authority to move its main studio and transmitter from East Dubuque, Illinois, to Dubuque, Iowa. Sanders Brothers Radio Station, WKBB, appears in this proceeding as intervenor in

Docket No. 3967 and the Telegraph Herald appears as intervenor in Docket No. 4031. No objection being offered on the part of either of the applicants, the cases were consolidated and heard as one case.

STATEMENT OF FACTS

To the end that the matter contained in this report may be presented in an orderly manner, the facts applicable to each particular case and those applicable to both cases will be treated separately.

Docket No. 3967

The applicant, the Telegraph Herald, is a corporation organized and existing under and by virtue of the laws of the State of Iowa. On March 31, 1936, the original charter of the corporation was amended so as to authorize the corporation to establish, purchase, or lease, operate, and maintain in the State of Iowa and elsewhere, radio stations for the purpose of sending and receiving all forms of radio communications, utilizing sound and vision or both as at present or hereafter developed or invented, and to do all things incidental to the conduct of radio broadcast business.

466 The assets of the corporation consist of cash on hand, in banks and post-office deposits, notes receivable, accounts receivable, investments, real estate, machinery and equipment, furniture, fixtures, automobiles, insurance paid in advance, patents, franchise and goodwill, circulation structure, and stock, with a total value of $1,097,712.36. The liabilities of the company which include accounts payable, reserve for depreciation of machinery, equipment, furniture and fixtures, surplus, capital stock, preferred and common, are fixed at $1,097,712.36. The value of the circulation structure of the paper is $233,984.26; patents, franchise, and goodwill are $41,365.46; the current liabilities are fixed at $160,000; so that the corporation has actually a net worth in excess of $840,000.

The stockholders of the corporation are all citizens of the United States.

The corporation is now engaged in the publication of a daily newspaper in Dubuque, Iowa. The Dubuque Herald was established in 1836. Another paper, known as the Dubuque Telegraph, was established in Dubuque in 1876, and these two papers were consolidated in 1901. The Dubuque Times Journal, another newspaper published in Dubuque, was established in 1861. This paper was consolidated with the Telegraph Herald on April 2, 1927, so that all of the daily papers in Dubuque are now pub-

lished by the Telegraph Herald, the applicant herein, except the Catholic Daily Tribune, which has a small circulation in Dubuque but is regarded as a national publication with a circulation throughout the United States. There is also published in Dubuque a weekly paper, the Dubuque Leader. The Telegraph Herald maintains a reportorial staff in the City of Dubuque of five reporters, one society editor, and approximately 150 county correspondents as a news-gathering organization. The President of the company is Mr. Fred W. Woodward, who owns approximately 51% of the stock. The circulation area of the paper is approximately that of the trade area of the City of Dubuque. This area extends thirty-five or forty miles in each direction from Dubuque. However, the circulation of the paper is greater in the State of Iowa in the district surrounding Dubuque than it is in the states of Illinois and Wisconsin. The circulation of the paper in the City of Dubuque is approxi-
467 mately 10,000, and in the county of Dubuque it is approximately 14,000. The total circulation of the paper in the Dubuque trade area is approximately 31,000. This paper has the franchise for the Associated Press, United Press, and International News service.

The officers of the applicant are men of wide business experience in the newspaper field, and should this application be granted, they contemplate the employment of an experienced staff to operate the radio station. The Board of Directors of the Corporation will control the policies of the station and the business manager of the station will be the present circulation manager of the Telegraph Herald. The tentative plans of the applicant are to install a Collins Type 20-A transmitter with vertical radiator one-fourth of a wave length high which will be 185 feet. An efficient ground system will also be installed. This will consist of a network of copper wires of not less than 120 radials extending outward from the base of the radiator for a distance of at least 185 feet. These radials will be spaced three degrees apart. They will be buried in the ground about six inches below the surface. The approximate cost of this equipment installed will be $25,000.00.

The applicant proposes to construct two studios which will be sound proof and acoustically treated. One of the studios will be sufficiently large to accommodate orchestras and groups comprising a great many people.

The staff personnel of the proposed station will include the manager, a chief engineer, assistant engineer, a program director, chief announcer, two assistant announcers, three operators, one

stenographer and a sales force. The estimated monthly operating expense of the proposed station will be approximately $2,000.00.

The proposed station will be operated separately from the Telegraph Herald, but will have its financial backing; and funds have already been set aside for the purpose of meeting such expenses as may be incurred in connection with the construction of the proposed station.

No estimate has been made of the monthly income of the proposed station, but representatives of the applicant have contacted a large number of advertisers who have signified that they would be interested in using the station as an advertising medium.

468 It is also estimated that the station will render a good rural service with 500 microvolts per meter for a distance of thirty-five miles from the transmitter. The evidence further shows that the station will lay down a signal of 10 millivolts per meter at a distance of approximately 7½ miles, and 2 millivolts per meter at 18 miles. Calculating the field intensity at 0.25, the service with that intensity would extend to a distance of 48 miles.

It is estimated that the proposed station of the Dubuque Herald, should this application be granted, would serve within its 10 millivolts per meter contour (a radius of 7.5 miles) a population of 51,300; 2 millivolts per meter (a radius of 18 miles) 81,009; 0.5 millivolt per meter (a radius of 35 miles) 136,320; and 0.25 millivolt per meter (a radius of 48 miles) 292,900.

Applicants made a part of the record in this case the depositions of twenty-four witnesses, which include three college and university presidents, Superintendent of the Archdiocese School of Dubuque, Principal of a sectarian school, Superintendent of the City Schools of Dubuque, six County School Superintendents from Iowa, Wisconsin, and Illinois, two directors of musical academies, four agricultural agents, a farm adviser, a music teacher, two ministers, a health officer, Chief of Police of the City of Dubuque, and the Sheriff of Dubuque County.

Each of these witnesses expressed a willingness to participate in or aid in the production of programs in their respective fields of endeavor. The program material from this source falls into the general classification of educational, and may be further classified as cultural, devotional, musical, and husbandry. Many of the witnesses are know beyond the borders of their respective states and communities for their outstanding ability in their particular sphere and would be able to render much assistance in the matter of radio programs. More than 50% of these witnesses are appearing or have appeared on the programs of Sta-

tion WKBB, one of the applicants herein. All of these witnesses were interviewed by representatives of the applicant, the Telegraph-Herald. Free time was offered each witness or the institutions represented by them, and according to the evidence, 469 the witnesses were advised that the proposed station would cover an area with a radius of fifty to seventy-five miles from Dubuque.

Some of the witnesses who reside forty or fifty miles from Dubuque stated they were unable to get service from Station WKBB in their respective communities. This was particularly true in Clayton County, Iowa, which lies north and west of Dubuque; Grant County, Wisconsin, which lies north and east of Dubuque and across the Mississippi River; also in portions of Jo Daviess County, Illinois, which is across the Mississippi River from Dubuque and to the southeast. Station WKBB is now located in the extreme northeastern part of Jo Daviess County in East Dubuque, Illinois, which is directly across the Mississippi River from Dubuque, Iowa. Jo Daviess County, Illinois, covers an area approximately forty miles east and west, measured on the north line, twenty-five miles east and west along the south line, and about twenty-five miles wide from north to south.

One of the agricultural agents assigned as a reason why they were not now using the facilities of Station WKBB that their people could not hear the programs because of the limited coverage of that station. Others gave as a reason for not using the station that they were unable to get a desirable hour to give farm broadcasts. One agent stated that a committee had been appointed to work out a period satisfactory to the four or five agricultural agents who had been extended the use of the station by WKBB, but that no time has been definitely arranged as between these agents.

The applicant proposes to establish programs in behalf of the rural sections which would include the counties of Dubuque, Clayton, Delaware, and Jackson in the State of Iowa, Grant County, Wisconsin, and Jo Daviess County, Illinois. These programs will be prepared and given by the agricultural agents and county school superintendents of each of these counties. It is contemplated that these programs will be rotated on a six days a week basis between the six counties, each county agricultural agent and school superintendent giving a program for their respective counties at a suitable hour once a week. The length of these programs has not been definitely determined, but it will be somewhere between fifteen and thirty minutes for each

particular activity. These programs will go on the air
470 from the studio at Dubuque with the exception of special occasions when remote control will be established by the applicant at various points where the programs originate. These programs are intended to deal with the general educational problems applicable to rural communities and to the agricultural sections of the area proposed to be served.

Should the service of the proposed station extend a distance of approximately thirty-five miles from Dubuque, this would render a good rural service as far northwest as Elkader, which is the county seat of Clayton County, Iowa, and about in the center of the county; but the proposed station undoubtedly would not render a good rural service in the northwestern part of Clayton County, which would be a distance of more than sixty miles from Dubuque. Delaware County, which is within the area the applicant proposes to serve, lies directly west of Dubuque and the western line of this county is approximately fifty miles from Dubuque. The proposed station would render a good rural service throughout the entire area of Jackson County, Iowa, which lies to the south of Dubuque, also in Jo Daviess County, Illinois, which is across the river and southeast of Dubuque. The station would also render good rural service in the greater portion of Grant County, Wisconsin, which lies across the Mississippi River and to the northeast of Dubuque.

The Telegraph Herald has filed a tentative program schedule for one week. The Sunday program contains announcements of services from the various churches in Dubuque, the names of the pastors, and the various church activities of the week, also sermon on Sunday morning, organ concerts, radio bible class, church services of the Dubuque Ministerial Association and Catholic churches, news, Farm home hour, transcriptions, musical interludes, dramatics from the University of Dubuque and other local schools, vocal selections, civic club programs, including Y. W. C. A. and Y. M. C. A., instrumental music and vesper service.

The weekday programs include safety flashes, weather reports, morning devotion, organ recitals, market reviews, woman's institute, health talks, farm programs, book reviews, school programs, sports reviews, and children's programs. This is a fair cross section of the various programs which the applicant proposes
471 to render to the listening public, should this application be granted. The tentative program submitted by the applicant covers a wide range of interesting subjects and is not only educational and instructive, but entertaining, and touches practically every phase of religious, social, business, and educational life in the community which it proposes to serve.

The proposed week's program will devote 12¼ hours to education, 10¼ hours to agriculture, 35½ hours to entertainment, 5½ hours to religion, 10¾ hours to news, and 1¾ hours to fraternal and civic broadcasts. The applicant also proposes to use at least four permanent remote controls to colleges, churches, and the United States Weather Bureau, supplemented by several temporary remote controls to special activities in the six counties in the states of Iowa, Wisconsin, and Illinois, elsewhere referred to in this report as the service area of the proposed station.

It is the purpose of the applicant in the broadcast of its programs to feature agricultural and educational interests and broadcast religious programs of all denominations, to give a timely news service, and cooperate with and give free time to all civic, philanthropic, charitable, and fraternal organizations, the local county and state agencies, and to provide a forum for the discussion of questions of public concern.

The Telegraph Herald filed as a part of its case Exhibits No. 11 and 12 which show the type of program, the amount of local talent, transcriptions, and ABC net work which appeared over that station on September 2 and 6, 1936. According to Exhibit No. 11, 18% of the time was utilized by local talent, 30% by transcriptions, and 52% by ABC network. The local talent item was further broken down into figures which show that 115 minutes were used by studio announcer, 15 minutes by local artists, and 40 minutes by a sponsored orchestra. Exhibit No. 12 discloses that 78 minutes of the time of the station were used by local talent, 192 minutes for transcription, and 570 for ABC network, or for local talent 9%, transcriptions 23%, and ABC network 68%.

The applicant, the Telegraph Herald, has consistently refused to carry in its newspaper the programs of Station WKBB as a news matter of public interest to Dubuque and vicinity.
472 These programs may be published in the Telegraph Herald only as paid advertising. The Telegraph Herald, while refusing to publish local radio programs as news items, does publish daily and without charge the programs of the National Broadcasting Company, WEAF (Red) Network, Columbia Broadcasting System, WABC Network, and NBC–WJZ (Blue) Network. The radio programs published by the Herald include programs from stations in widely separated sections of the United States including network programs from the Dominion of Canada.

It was disclosed that only eight out of twenty-seven daily newspapers in Iowa charge the regular rate for radio programs. Attention was called to the fact that one of these papers was the Clinton Herald, Clinton, Iowa, which is near Dubuque. It will be noted that there is no radio station in Clinton.

Whether the policy of the Telegraph Herald in refusing to publish in the columns of its daily papers as news of interest to the public the programs of station WKBB without charge was actuated by selfish motives, standing alone, is not an issue in this proceeding; but if this policy were established for the purpose of impairing or destroying the usefulness of Station WKBB to the citizens of Dubuque and the area it serves in order to enhance its possibility of obtaining a permit to construct a radio station in the same community as that now served by WKBB, an entirely different situation obtains.

WKBB Exhibits No. 1 A, B, C, D, E, F, and G, and 2 and 3, copies of the Telegraph Herald paper of August 9, May 20, 28, 29, and 31, June 12, July 15, September 9 and 10, offered as evidence by the respondent station WKBB, in Docket No. 3967, disclose that the Telegraph Herald carried in these various issues of its paper advertisements of alcoholic liquors, giving the name of the brand, the price, the place of manufacture, and the name of the distiller. It was contended by intervenor station WKBB that the publication of these advertisements was in contravention to the laws of the State of Iowa in respect to alcoholic beverages.

The Code of Iowa 1935, Chapter 93–F1, Par. 1921–f47 provides as follows:

"Advertisements.—Except as permitted by federal statute
473 and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state.

"1. No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the commission and then only in strict accordance with such regulations.

"2. This section of the chapter shall not apply however—

(a) To the liquor control commission.

(b) To the correspondence, or telegrams or general communications of the commission, or its agents, servants, and employees.

(c) To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of such agents, servants, or employees of any telegraph company (45 Ex GA (1) ch. 24, Sec. 40)."

The penalty provisions of the Act are as follows:

"Counts.—Information or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as

on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty. (45 Ex GA, ch. 24, Sec. 83); Code of Iowa 1935, Ch. 93–F1, Par 1921–f90.

"Penalties generally.—Unless other penalties are herein provided, any person who violates any of the provisions of this chapter * * * shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment. (45 Ex GA, ch. 24, Sec. 84); Code of Iowa, 1935, Ch. 93–f1, Par. 1921–f91."

(1) Extra session, General Assembly.

An official of the Telegraph Herald, testifying in respect to these advertisements, stated that they had discontinued running them approximately six weeks prior to the time of this
474 hearing, September 14th. Intervenor WKBB's Exhibits 2 and 3 show that alcoholic beverage advertisements were carried in the columns of the Telegraph Herald as late as September 10, 1936. The witness in explaining this discrepancy in the testimony with reference to the discontinuance of these advertisements, stated that these were contracts which it was necessary for the paper to carry out, but that when these contracts were completed, the paper would carry no more liquor advertisements.

The Telegraph Herald objected to the introduction of these advertisements on the ground that they were immaterial to the issues in the case. The official of the Telegraph Herald who appeared as a witness in this hearing had already testified that the policies of the proposed station would be the same as that of the newspaper and for that reason these exhibits were admitted in evidence. It will be noted, however, that this witness stated specifically that if the application were granted, they would not under any circumstances carry any liquor advertisements over the radio.

It is expected that there will be some degree of interference experienced within the ½ millivolt per meter contour of the proposed station, caused principally by Station WSPD, Toledo, Ohio, in the early morning and late afternoon hours. The magnitude of such interference will depend upon the season and the sun spot cycle. The interference will probably be greater during the winter months when sunset occurs earlier and the layer has a tendency to form earlier in the afternoon hours. As a result of this interference, the service of the proposed station may be limited on occasions to its approximate 7 millivolt contour. However, that condition will not obtain regularly or at all times. In view of the fact that Station WSPD is operating on 5,000 watts

in the daytime and reducing power at least one hour previous to the time the proposed station would sign off, it would be expected that some degree of interference would be experienced on occasions within the half millivolt contour of Station WSPD. That, however, would not be classed as serious interference.

Docket No. 4031.

Sanders Brothers Radio Station, applicant herein, is a corporation organized and existing under the laws of the
475 State of Illinois, and owns and operates Station WKBB, which was originally licensed at Joliet, Illinois, but is now located at East Dubuque, Illinois.

On March 14, 1932, Sanders Brothers Radio Station filed an application with the Federal Radio Commission requesting authority to move its studio and equipment from Joliet to East Dubuque, Illinois. The application was granted without a hearing on May 27, 1932. Thereupon the Telegraph Herald, applicant in Docket No. 3967 and forming a part of this proceeding, filed a protest with the Federal Radio Commission against the removal of the station, and the case was designated for hearing, on the protest. It was revealed in the hearing that the Telegraph Herald had no application pending and the protest was accordingly dismissed.

In due season the Telegraph Herald appealed from the ruling of the Commission to the Court of Appeals of the District of Columbia. In its opinion the Court of Appeals sustained the action of the Commission, holding that the Telegraph Herald was not an interested party in the case within the meaning of the Act, and was therefore without standing in court.

The application of Sanders Brothers Radio Station for removal from Joliet to East Dubuque contained the statement that the purpose of the removal was to furnish local radio service to East Dubuque, Illinois, and to Dubuque, Iowa.

Station WKBB was authorized by order of the Federal Radio Commission on October 12, 1932, to move its studio and equipment to East Dubuque, Illinois. Pursuant to this order, the station moved to East Dubuque and commenced operating the latter part of 1933. The removal of the station was for economic reasons.

The original grant of this station on September 30, 1925, was for 100 watts power on 1310 kilocycles, sharing time with Station WCLS. Following the removal from Joliet to East Dubuque a license was issued to the station which provided for specific hours of operation (8½ hours a day) with 100 watts

power. The frequency was changed from 1310 to 1500 kilocycles.

On June 29, 1934, the station was granted unlimited
476 time on the same channel and frequency. On May 14,
1935, Station WKBB was granted authority to use 250 watts daytime with 100 watts after local sunset. That is the present assignment of the station.

In the latter part of 1933, Walter E. Klauer entered into a contract to purchase the outstanding stock of Sanders Brothers Radio Station, and the transfer of the stock to Mr. Klauer was approved by the Federal Radio Commission. He thereupon became the President of Sanders Brothers Radio Station, which had moved from Joliet to East Dubuque, Illinois.

Following the purchase of this stock and on or about January 1, 1934, Mr. Klauer was summarily dropped from the Chamber of Commerce Committees on which he had previously served. This was apparently a reprisal on the part of the Telegraph Herald against Mr. Klauer, since Mr. F. W. Woodward, President of the Telegraph Herald, was the President of the Chamber of Commerce and exercised control over the activities of the organization.

At the expiration of the term of office of Mr. Woodward as President of the Chamber of Commerce and the inauguration of a new President, Mr. Klauer was reinstated to the various committees to which he had been previously assigned. These and other facts in the record tend to show that executives high in the counsel of the Telegraph Herald have long made an effort to bring Station WKBB into disrepute in the Dubuque area.

Prior to the negotiation for the purchase of the stock of Sanders Brothers Radio Station, Walter E. Klauer sought to obtain local radio facilities for the City of Dubuque, but due to the quota provisions of the Radio Act, a new station could not be granted by the Federal Radio Commission at Dubuque nor was he able to obtain the removal of a station from some other point within the State of Iowa to Dubuque. He next sought to obtain the removal of a station in Illinois to West Dubuque and thereby give to Dubuque a local radio service.

Walter E. Klauer, the principal stockholder, is President, his father, W. E. Klauer, is Vice President, and John D. Carpenter, Treasurer of Sanders Brothers Radio Station.

The officers of the corporation are men of wide business experience, particularly in the industrial field. Mr. W. E. Klauer
is President and Walter E. Klauer General Manager
477 of the Klauer Manufacturing Company, manufacturers of snow removal equipment. This company is one of the largest industries in the City of Dubuque. Mr. Walter E. Klauer

is also Vice President of the Klauer-Julian Hotel Corporation, which operates the Hotel Julian in Dubuque, one of the largest hotels in the State of Iowa. The Dubuque studio of Station WKBB is located in the Hotel Julian, and should this application be granted, the main studio of the station will be established in this hotel.

All of the stockholders of the Sanders Brothers Radio Station are citizens of the United States.

The financial statement of Sanders Brothers Radio Station for an eight-month period ending August 31, 1936, shows that the total income of the broadcasting station for that period was $21,453.57. The operating expense during that period was $16,546.90, leaving a net profit from broadcasting of $4,906.67. Against this net profit there is an item of depreciation of $2,894.72 and reserve for uncollected debts of $2,487.23, leaving a net loss for the operating period of $475.28.

The statement further discloses that the station sustained a deficit for the year 1935 of $4,165.85, while the deficit for the eight months of 1936 was only $475.28, indicating a much improved financial condition in the operation of the station.

The current and fixed assets of the corporation are valued at $30,410.37. This includes cash in bank $5,874.67 and accounts receivable $11,144.31, less reserve of $2,509.23 for bad debts. The current liabilities are fixed at $30,410.37. This includes capital stock $25,000 less surplus deficit $4,641.13, plus accounts payable.

Should this application be granted, the applicant proposes to construct a Truscon vertical radiator 250 feet above the ground. Such antenna is expected to produce an unattenuated field of 225 millivolts per meter at a mile per kilowatt input or 112½ millivolts per meter at a mile for 250 watts.

The ground system will consist of 100 radials of one inch copper ribbon, 250 feet long, equally spaced and buried radially, the antenna at center, and also a thirty-foot square ground screen immediately below the radiator to reduce the ground losses. The applicant contemplates the use of its present transmitter.

478 Practically all of the equipment of the station was replaced within the past year. This included the installation of a new transmitter, all of the speech input equipment and amplifiers, and, in fact, the entire transmitting equipment was replaced during the past year with the exception of the frequency monitor.

The estimated cost of the new equipment and expense of moving Station WKBB from East Dubuque, Illinois, to Dubuque, Iowa, includes: tower $4,000.00, ground $500.00, building

$5,000.00, land (site) $3,000.00, land improvements $1,000.00, moving and installation of fixtures and equipment $1,500.00, or a total of $15,000.00.

Walter E. Klauer, President of Sanders Brothers Radio Station and owner of practically all of the outstanding stock of the corporation, testified that he had an annual income in excess of $15,000 from his connections other than that of President of Sanders Brothers Radio Station, and that he had sufficient funds available to finance the removal of Station WKBB from East Dubuque, Illinois, to Dubuque, Iowa, should this application be granted.

The estimated monthly cost of operating the station would be approximately $2,000.00. These figures are based on the profit and loss statement filed by the applicant in this case. The average monthly receipts of the station, based on the same statement, are approximately $2,600.00.

The average radius of the 0.5 millivolt contour for Station WKBB, operating with its proposed antenna in its proposed location, about three miles south of Dubuque on the west side of the Mississippi River, would be approximately 32½ miles. Field strength measurements of the present signal of Station WKBB show that in the center of the City of Dubuque the signal was 10 millivolts per meter or greater; at the western limits of Dubuque it was 2 millivolts per meter or greater; while 20 miles west it was 0.5 millivolt per meter or greater; at the eastern limits of Dubuque it was 2 millivolts per meter or greater, and 20 miles east it was 0.5 millivolt per meter or greater. Should this application be granted, and with the new proposed facilities and the increase in operating efficiency of the station, it would be expected that Station WKBB would have a substantially larger coverage than now exists.

479 It is estimated that Station WKBB serves out to its 0.5 millivolt per meter contour in daytime with 250 watts power, at its present location, a population in the State of Illinois of 10,117, in Wisconsin 11,500, in Iowa 73,369, or a total of 94,986 people.

It is also estimated that the station, out to its 2 millivolt per meter line at night, with 100 watts power, at its present location, serves a population in Illinois of 4,750, in Wisconsin 2,235, in Iowa 43,944, or a total of 50,929 people.

It is also estimated that this station, with its proposed antenna at its proposed location would serve to its 0.5 millivolt per meter contour in the daytime, with 250 watts power, 15,175 people in Illinois, 35,000 in Wisconsin, 103,838 in Iowa, or a total of 154,000 people.

The station would serve out to the 2 millivolt per meter contour at night, with 100-watts power, 6,900 people in Illinois, 2,850 in Wisconsin, 49,127 in Iowa, or a total of 60,725.

The applicant submitted a daily program extending from Sunday, August 30, through September 12, 1936, or for a period of two weeks. The programs feature a religious service on Sunday with divine music. The week-day programs include popular, classical, and folk music, also a morning studio church service, educational items, sports, news, and agricultural talks by the County Agent for Dubuque County, using material supplied by the United States Department of Agriculture, Iowa State Extension Service, and the Illinois and Wisconsin Departments of Agriculture.

The programs offered the listening public by Station WKBB are of high standard, well balanced, and meritorious.

Station WKBB undertook to give the listening public, particularly the agricultural area which it serves, weekly agricultural programs supplied by County Agents. It was found that a great deal of difficulty was encountered in broadcasting these programs due to the fact that these agents lived at distant points and were frequently unable to reach the station promptly, making it necessary to rearrange the daily programs of the station.

The facts disclose that the station has ample time for broadcasts of these various activities and commercial programs.

480 The applicant has offered the facilities of the station without charge to all of the educational institutions of Dubuque, churches, civic organizations, law enforcement officers, the officials of the city government of Dubuque, the county agricultural agents of Dubuque, Jackson, Delaware, and Clayton Counties in Iowa, Grant County, Wisconsin, and Jo Daviess County, Illinois. Many of the colleges and schools in Dubuque, the protestant and Catholic churches, the law enforcement officers, the civic clubs, patriotic organizations, and the government officials of the City of Dubuque have availed themselves of the use of these facilities. In several instances the applicant has supplied remote control to aid in the production of programs, particularly in the schools and colleges of Dubuque.

Station WKBB filed a list of local talent used during the past eighteen months. This talent was drawn largely from the City of Dubuque; however, some of it came from the States of Wisconsin and Illinois. The talent included a choir, a male quartet and soloists from the University of Dubuque, a choir and soloists from Columbia University, also several students appeared from local conservatories. Ten orchestras were included in this list, several string quartets and trios, seven pianists, and

numerous other artists, both musical and dramatic, indicating a great wealth of talent in the Dubuque area.

Applicant offered in evidence WKBB Exhibit No. 23, which consists of statistical matter respecting Dubuque industries, wholesale and retail outlets, transportation facilities, population data, program analysis, and a radio survey conducted over the telephone by Station WKBB during the week of July 27, 1936. This exhibit was admitted over the objection of the attorney for the Telegraph Herald. All of the matter contained in the exhibit with the exception of the survey made over the telephone, undoubtedly was competent evidence, but the Examiner at the time of the admission of this exhibit, had some doubt as to the admissibility of the telephone survey part of the exhibit, and has now reached the conclusion that the telephone survey of this exhibit was not admissible because of its hearsay character and that it has little or no probative force. The facts contained in this survey have been wholly disregarded by the Examiner in this report.

481 The following facts are applicable to both applications in this proceeding:

Dubuque, Iowa, where applicants have requested authority to construct broadcast stations is the county seat of Dubuque County, and in the northeastern portion of the state upon the west bank of the Mississippi River.

The States of Wisconsin and Illinois lie directly across the river and the state line between these two states, if extended west, would pass through the city of Dubuque. East Dubuque, the present location of Sanders Brothers Radio Station, WKBB, is in the extreme northeastern corner of Jo Daviess County, Illinois, and is directly east across the Mississippi River from Dubuque. The applicants propose to serve not only the city of Dubuque but Jackson, Dubuque, Delaware, and Clayton Counties in the State of Iowa, Grant County, Wisconsin, and Jo Daviess County, Illinois.

The city of Dubuque, according to the 1930 census, had a population of 41,678; Dubuque County 61,214, of which approximately 32% were rural. It is estimated that 93% of the population of the city of Dubuque is native white, 6% foreign born, and 2% negro.

Clayton County, which lies to the northwest of Dubuque, had a population in 1930 of 24,559. The population of the county is almost entirely rural with only four towns in the county having a population of 1,000 or more. Delaware County had a population of 18,122, of which 81% was rural. Jackson County had a population of 18,481, more than 80% of which was rural. Grant County, Wisconsin, had a population of 38,469, of which

89% was rural, and Jo Daviess County, Illinois, had a population of 20,235, of which 80% was rural. The area which applicants proposed to serve, outside of the city of Dubuque and the towns in the various counties, is devoted to agricultural pursuits which include stockraising, growing grain, dairying, and poultry, and represents one of the highly developed farming sections of the States of Iowa, Wisconsin, and Illinois.

There is a total of 29 weekly papers and 13 daily papers in this area. Of the 13 daily newspapers, there are circulated in Dubuque the Dubuque Herald, the applicant herein, the Catholic Daily Tribune, the Des Moines Register Tribune of Des
482 Moines, and the Cedar Rapids Gazette of Cedar Rapids. All of the papers, both daily and weekly, which circulate in this area, are competitive, particularly in the advertising field. The 29 weekly newspapers are sold to Dubuque advertisers either as a group or any portion thereof within the discretion of the proposed advertiser.

It is estimated that 8,189 homes in the city of Dubuque possess radios. The city has 10,432 families, 9,098 dwellings, 1,012 apartments, and 5,187 home owners. Dubuque has one national bank and two state banks with total deposits of $13,364,582 and resources in excess of $14,000,000.

The transportation facilities of Dubuque consist of four transcontinental rail lines, five United States Highways, six bus lines, and one airport. Dubuque lists among its industries that of meat packing, the manufacture of farm machinery, farm tools, boats, boilers, and snow removing machinery. The wholesale and retail outlets in the city of Dubuque number 592, of which 111 are retail grocery stores, 38 meat markets, 47 candy and confectionery, 18 motor vehicle dealers, 17 men's clothing stores, 6 women's ready to wear stores, 8 women's accessories stores, 8 radio and music stores, 15 furniture and household stores, 30 restaurants and eating places, 8 lumber and building material dealers, 7 heating and plumbing shops, 8 hardware and farm implement stores, 5 farmers' supply stores, 14 coal, wood, and ice dealers, and a large number of miscellaneous merchandising establishments.

The volume of retail trade for Dubuque County for 1935 is estimated at $17,122,800. The county auto registration for that year was 12,072. There were 9,756 wired homes, 9,131 telephones, and 7,528 gas meters.

There are 13 public schools of all grades, 14 parochial schools and five colleges and universities, with a total student body of 10,510. Dubuque has 37 churches, 4 hospitals, 14 clubs and lodges, 7 hotels, 17 city parks, and 122 miles of paved streets. It is estimated that 12,051 males and 4,485 females are employed.

The city of Dubuque is operated under a City Manager form of government. Connecting the city of Dubuque with Grant County, Wisconsin, and Jo Daviess County, Illinois, is a toll bridge on which a charge of 25% is made for each automobile crossing.

483 The City of Dubuque receives a signal of 10 millivolts per meter or greater from Station WKBB. The eastern city limits of Dubuque receive 2 millivolts per meter or greater from two stations. The western city limits also receive 2 millivolts per meter or greater from two stations. At a distance of twenty miles west of Dubuque, six stations are received with 0.5 millivolt per meter or greater; forty miles west of Dubuque five stations are received with 0.5 millivolt per meter or greater; twenty miles east of Dubuque there are seven stations which are received with a signal of 0.5 millivolt per meter or greater; and forty miles east of Dubuque there are six stations received with a signal of 0.5 millivolt per meter or greater.

The 10 millivolt per meter contour is the accepted standard for the minimum field intensity required to render good service in business sections of cities. The 2 millivolt per meter contour is the minimum intensity required to render good service in residential and suburban sections of cities. The 0.5 millivolt per meter contour is the intensity required to render what is specified as good service in rural sections. The 0.25 millivolt per meter contour is the standard for what is termed fair service in the rural areas, and the 0.1 millivolt per meter contour is the standard termed as poor service in rural areas.

CONCLUSIONS

Docket No. 3967

1. The Applicant, the Telegraph Herald, possesses the legal, technical, financial, and other qualifications to construct and operate the proposed station.

2. The applicant has failed to establish a need for additional daytime service in the area proposed to be served; nor does the applicant propose to render any new, novel, or different service from that already being received in that area. The major portion of the area proposed to be served by applicant is now receiving service from an existing facility located at East Dubuque, Illinois. The city of Dubuque is receiving at both its east and west city limits a signal of two millivolts per meter or greater from Station WMT at Waterloo, Iowa.

3. Issue No. 3 has no application to this case.

484 4. Application No. B4-P-687, from Clinton, Iowa, is the only one pending that is pertinent to this case. The

Clinton station requests operation on 1310 kilocycles, 100 watts power, unlimited time. Clinton, Iowa, is approximately fifty miles from Dubuque and the recommended separation between assignments such as are requested herein is 58 miles. Due, however, principally to the difference on the high frequency and the broadcast band, no interference is expected within the normally protected contours of the stations involved. The issues list as a pending application No. B4–P–965. This is an application pending for a broadcast facility at Cedar Rapids, Iowa. No interference is expected from this station to that of the applicant since the recommended separation is 62 miles and the actual 68.

5. The applicant will be required to mark the towers, should this application be granted, in accordance with the engineering specifications as contemplated by Section 303 of the Communications Act of 1934.

6. Since no exact site was specified in the application, it is recommended that in the event this application should be granted that the applicant be required to comply with the engineering standards of the Commission with respect to the site.

7. The granting of this application will not serve public interest, convenience, and necessity.

Docket No. 4031

1. The applicant is already serving the area proposed to be served by a station now located at East Dubuque, but should this application be granted, it is believed that the service of the station will be improved in the Dubuque area.

2. This issue has no application to this case.

3. There are a number of pertinent pending applications which involve the question of interference. These applications, however, also involve the question of interference, with the present assignment of WKBB. All of these applications request operation on 1500 kilocycles. The following is a list of the towns, power, and distance from East Dubuque of these pending applications: Appleton, Wisconsin, 100 watts, unlimited time, 168 miles; Oak Park, Illinois, 100 watts, unlimited time, 152 miles; Joliet, Illinois, 100 watts at night and 250 watts until local
485 sunset, unlimited time, 150 miles; Winona, Minnesota, 100 watts, unlimited time, 118 miles; and a station at Galesburg, Illinois, requesting 100 watts with specified hours, 110 miles. The distance given above as from East Dubuque since the application of WKBB only requests a removal of two miles from its present site. In each of the foregoing pending applications the recommended separations for operation at night is 180 miles and should either of these applications be granted, objectionable interference would be present for night operating conditions of

Station WKBB and with those as proposed but no interference is expected during daytime hours.

4. Applicant has not specified an exact site and it is therefore recommended that should this application be granted, that the applicant be required to comply with the engineering standards of the Commission with respect to a site.

5. The antenna which the applicant proposes to use will comply in all respects with the rules and regulations of the Commission, particularly Rule 131, and will render proper service.

6. The granting of this application will serve public interest, convenience and necessity.

RECOMMENDATIONS

It is accordingly recommended:

1. That the application of the Telegraph Herald, Docket No. 3967, be denied.

2. That the application of Sanders Brothers Radio Station (WKBB), Docket No. 4031, be granted.

JOHN P. BRAMHALL,
Examiner.

Submitted: October 31, 1936.

Released: Nov. 24, 1936. Exceptions Due: Dec. 9, 1936.

[Endorsed:] Federal Communications Commission. Mail and Files Section. 1936, Dec. 10, A. M. 8:20.

[Endorsed:] Federal Communications Commission. Dec. 9, 1936. Office of Secretary.

486 Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re Application of Telegraph Herald (New), Dubuque, Iowa. For Construction Permit.

Docket No. 4031

In re Application of Sanders Brothers Radio Station (WKBB), East Dubuque, Illinois, For Construction Permit to move studio and transmitter to Dubuque, Iowa, and install new antenna.

Exceptions to examiners report No. I–310 and request for oral argument.

Comes now the Telegraph Herald, one of the applicants above named and excepts to the report of John P. Bramhall, Examiner, in connection with its application to construct a new station to be operated daytime only in Dubuque, Iowa, on 1340 kilocycles with

power of 500 watts, also in connection with the application of Sanders Brothers Radio Station (WKBB), for construction permit to move its studio and transmitter of Station WKBB to Dubuque, Iowa, and requests oral argument with regard to the said report.

EXCEPTIONS

(1) The applicant excepts to the finding of the Examiner that more than 50% of the witnesses whose depositions were taken are appearing or have appeared on the programs of Station WKBB, and also to the finding that each one of the deponents was advised that the applicant's proposed station would cover an area with a radius of 50 to 75 miles from Dubuque.

(2) The applicant excepts to the failure of the Examiner to find that several of the agricultural agents assigned as a reason why they were not now using the facilities of Station WKBB the fact that there was a very poor tie-up concerning farm programs (Dep. p. 3), or that suitable time was not made available (Dep. pp. 58-59, 270); and also to the failure of the Examiner to find that the Telegraph Herald plans to give to the agricul-
487 tural agents broadcast periods over its proposed station which will be most satisfactory to them (Exhibit #4; Dep. pp. 8, 57, 223, 266, 271).

(3) The applicant excepts to the failure of the Examiner to find that the publication of major network programs in the Telegraph Herald is in line with the policy of the Iowa Daily Newspaper Press (R. 314); that the Telegraph Herald has never been requested by WKBB to carry the programs of that station (R. 315); and that the Telegraph Herald has never refused advertising matter on the ground that it refers to WKBB programs (R. 311).

(4) The applicant excepts to the inference of the Examiner that the policy of the Telegraph Herald toward Station WKBB is for the purpose of "impairing or destroying the usefulness" of that station "in order to enhance its possibility of obtaining a permit to construct a radio station in the same community."

(5) The applicant excepts to the inference of the Examiner that the Telegraph Herald has been guilty of violating the laws of the State of Iowa concerning the advertising of alcoholic liquors, and to the Examiner's failure to include facts explanatory of the matter, if indeed the matter may be considered even remotely pertinent to the issues.

(6) The applicant excepts to the finding that Station WSPD will, on occasion, limit the service of the proposed station to approximately the 7 millivolt per meter contour.

(7) The applicant excepts to the finding of the Examiner that Walter E. Klauer was "summarily dropped" from the Chamber

of Commerce after he had purchased control of WKBB, and to the inference of the Examiner that any change in Klauer's Chamber of Commerce activities was due to the President of the Telegraph Herald, much less a "reprisal" on the part of that official.

(8) The applicant excepts to the finding that the record tends to show that executives high in the councils of the Telegraph Herald have long made an effort to bring WKBB into disrepute in the Dubuque area.

(9) The applicant excepts to the finding that the programs offered by Station WKBB are of "high standard, well balanced, and meritorious."

(10) The applicant excepts to the failure of the Examiner to find that numerous programs proposed by it are de-
488 partures from those broadcast by WKBB, and utilize a far greater percentage of local material. (R. 25–33.)

(11) The applicant excepts to the conclusion of the Examiner that it has failed to establish a need for additional daytime service in the proposed area and to render a type of service which is different from that already being received in that area.

(12) The applicant excepts to the conclusion of the Examiner that the granting of its application will not serve public interest, convenience, and necessity.

(13) The applicant excepts to the conclusion of the Examiner that the granting of the application of Sanders Brothers Radio Station will serve public interest, convenience, and necessity.

(14) The applicant excepts to the recommendation of the Examiner that the application of the Telegraph Herald be denied and that of Sanders Brothers Radio Station be granted.

Request for oral argument

The applicant, Telegraph Herald, requests an opportunity to present oral argument upon the Examiner's report, these exceptions, and the record in the case.

Respectfully submitted.

TELEGRAPH HERALD,
By (Sgd.) ELIOT C. LOVETT,
Its Attorney.

CITY OF WASHINGTON,
District of Columbia, ss:

I, Eliot C. Lovett, being first duly sworn, upon oath depose and say that I signed the foregoing Exceptions and Request as the attorney for the Telegraph Herald; that I know the matters and things set forth therein to be true of my own personal knowl-

edge except those stated upon information and belief and those I verily believe to be true; and that I have served a copy of the said Exceptions and Request upon each of the parties who participated in the proceeding by sending to each of them, by registered mail, postage prepaid, a copy thereof.

(Sgd.) ELIOT C. LOVETT.

489 Subscribed and sworn to before me a notary public in and for the District of Columbia this 9th day of December 1936.

[SEAL] (Sgd.) JERROLD B. ULLMAN,
Notary Public, D. C.

Federal Communications Commission, Washington, D. C.

Federal Communications Commission—Mail and Files Section.
1936, Dec. 11, A. M. 8:202

Docket No. 3967

In re Application of Telegraph Herald (New), Dubuque, Iowa. For Construction Permit.

Docket No. 4031

In re Application of Sanders Brothers Radio Station (WKBB), East Dubuque, Illinois, For Construction Permit to move studio and transmitter to Dubuque, Iowa, and install new antenna.

Request for Oral Argument

Now comes Sanders Brothers Radio Station, Inc., licensee of Radio Station WKBB, East Dubuque, Illinois, applicant in Docket No. 4031 and intervener in Docket No. 3967, by its attorneys, and pursuant to the provisions of Rule 106.29 respectfully requests permission to present oral argument at such time as the Commission may designate in opposition to the exceptions filed in the above-entitled cause on December 9, 1936, by the Telegraph Herald, applicant in Docket No. 3967.

Respectfully submitted.

SANDERS BROTHERS RADIO STATION (WKBB),
By LOUIS G. CALDWELL,
By REED T. ROLLO,
Its Att'orneys.

[Endorsed:] Federal Communications Commission, Office of Secretary. Dec. 10, 1936.

490 Minute #441

JANUARY 5, 1937—10:30 A. M.

Excerpt from Minutes of the Federal Communications Commission (Broadcast Division)

Present: Commissioners Sykes, Chairman, Case, and Prall.

Hearing Docket

The Broadcast Division granted the request for oral argument in re Examiner's Report No. I-310, on the applications of Telegraph Herald, Dubuque, Iowa, for construction permit for new station, Docket No. 3967, and Sanders Brothers Radio Station (WKBB), East Dubuque, Ill., for construction permit to move studio and transmitter to Dubuque, Iowa, and install new antenna, Docket No. 4031, and directed that said oral argument be heard on February 11, 1937.

[Endorsed:] Federal Communications Commission. Mar. 2, 1937. Office of Secretary. Received Mar. 3, 1937. Docket Section.

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re Application of Telegraph Herald (New), Dubuque, Iowa. For Construction Permit.

Docket No. 4031

In re Application of Sanders Brothers Radio Station (WKBB), East Dubuque, Illinois, For Construction Permit to move studio and transmitter to Dubuque, Iowa, and install new antenna.

Stipulation as to record

The parties to the above-entitled proceeding do hereby, through their respective attorneys of record, stipulate and agree that the record adduced at the consolidated hearing upon their applications be corrected and amended insofar as it is inconsistent
491 with the following facts which the parties requests that the Commission receive and make a part of the record in the case:

(1) Walter E. Klauer, President of Sanders Brothers Radio Station, was not assigned to any committee of the Dubuque Chamber of Commerce for the year 1931.

(2) The said Klauer was assigned to the Air Service Committee of the Chamber of Commerce for the year 1932. Mr. F. W. Woodward, President of the Telegraph Herald, was elected President of the Chamber of Commerce just prior to this committee appointment and served during the year 1932.

(3) The said Klauer was again assigned to the Air Service Committee of the Chamber of Commerce for the year 1933. Mr. Woodward was reelected for a second term as President just prior thereto and served during the year 1933.

(4) Station WKBB was moved from Joliet to East Dubuque, Illinois, and began operation at the new location in November 1933. The said Walter E. Klauer became associated with the station at that time and ultimately became the majority stockholder of the licensee corporation, his application for transfer of control being approved by the Federal Communications Commission on May 21, 1935.

(5) The said Klauer received no committee assignment for the year 1934. His 1933 assignment to the Air Service Committee expired in February 1934, at the same time that Mr. Woodward's term as President expired. Mr. Woodward was succeeded by Charles McLean, who was President of the Chamber of Commerce during the year 1934. Mr. McLean, by letter to Mr. Walter E. Klauer, under date of February 17, 1937, stated: "I was not aware that you had been a member of the Aviation Committee the preceding year, and did not observe the omission of your name from the list of members of that committee for the year 1934."

(6) For the year 1935 the said Walter E. Klauer was assigned to the Highways Committee and the National Legislation Committee. Mr. McLean was reelected President for 1935.

(7) The general practice regarding the appointment of committees of the Dubuque Chamber of Commerce is for
492 the secretary to prepare, at the direction of the new Board of Directors, a list of proposed committee assignments and to submit that list to the new president. The committees are then appointed by the new president, with the approval of the Board of Directors, immediately after the annual election. For the year 1934 the Board of Directors consisted of 17 persons, including the new president, Mr. McLean, and his predecessor, Mr. Woodward.

This stipulation is signed in quadruplicate this 2d day of March 1937. Two copies hereof are being filed with the record in the above-entitled proceedings.

SANDERS BROTHERS RADIO STATION (WKBB),
By REED T. ROLLO, *Its Attorney.*
TELEGRAPH HERALD,
By ELIOT C. LOVETT, *Its Attorney.*

Minute #540

JULY 2, 1937—10:00 A. M.

Excerpt from Minutes of the Federal Communications Commission (Broadcast Division)

Present: Commissioners Sykes, Chairman, and Case.

Hearing Docket

Upon consideration of the applications, record, and evidence in these cases, Examiner's Report No. I-310, the exceptions thereto and the oral argument heard, the Broadcast Division this day found that public interest, convenience, and necessity would be served by granting the applications of the Telegraph Herald for construction permit, and Sanders Brothers Radio Station for construction permit, and entered its final order granting the same in the following cases (Examiner sustained in part):

493 Ex. report	Docket No.	File No.	Applicant	Call letters	Nature of application	Action taken
I-310	3967	B4-P-990	Telegraph Herald, Dubuque, Iowa.	New	Construction Permit for new broadcast station to operate on 1340 kc.; 500 watts; Daytime. (Site to be determined, subject to Commission's approval.)	Application granted subject to compliance Rule 131.
	4031	B4-P-1147	Sanders Brothers Radio Station, Dubuque, Iowa.	WKBB	Construction Permit to move studio; move transmitter from R. F. D. # 1, E. Dubuque, Ill., to Julien Township, Iowa. (Site to be determined, subject to Commission's approval) and install new antenna. 1500 kc.; 100 watts night, 250 watts day; Unlimited time.	Application granted subject to compliance Rule 131.

The order as herein entered shall be effective at 3 A. M., Eastern Standard Time, July 27, 1937.

The permittees herein shall file applications for modification of construction permits, specifying the exact transmitter locations and the antenna systems within two months after the effective date of this order.

If, for any reason, such application cannot be submitted within the time allowed, an informal request for extension of time must be submitted stating the necessity therefor.

The Commission will issue and publish at a subsequent date an opinion setting forth a statement of the facts appearing of record and the grounds for the decision herein reached.

494 Federal Communications Commission, Washington, D. C. 22000

Order granting applications

July 2, 1937

The Commission this day entered its final order as indicated herein in the following cases:

Ex. report	Docket No.	Applicant	Call letters	Nature of appl.	Action taken
I-310	3967	Telegraph Herald, Dubuque, Iowa.	New	Construction Permit for new broadcast station to operate on 1340 kc.; 500 watts; daytime. (Site to be determined, subject to Commission's approval.)	Application granted subject to compliance with Rule 131.
	4031	Sanders Brothers Radio Station, Dubuque, Iowa.	WKBB	Construction permit to move studio; move transmitter from R. F. D. #1, E. Dubuque, Ill., to Julien Township, Iowa (site to be determined, subject to Commission's approval) and install new antenna. 1500 kc.; 100 watts night, 250 watts day; unlimited time.	Application granted subject to compliance with Rule 131.

The order as herein entered shall be effective at 3 A. M., Eastern Standard Time, July 27, 1937.

The permittees herein shall file applications for modification of construction permits, specifying the exact transmitter locations and the antenna systems, within two months after the effective date of this order.

If, for any reason, such applications cannot be submitted within the time allowed, an informal request for extension of time must be submitted stating the necessity therefor.

The Commission will issue and publish at a subsequent date an opinion setting forth a statement of the facts appearing of record and the grounds for the decision herein reached.

By order of the Commission:

I hereby certify that the foregoing is a full, true, and correct copy of the Order of the Federal Communications Commission, in Docket No. 3967 & 4031.

[SEAL] T. J. SLOWIE, *Secretary.*

By CHARLES W. WORTHY.

495 Minute # 546

JULY 30, 1937—10:30 A. M.

Excerpt from Minutes of the Federal Communications Commission (Broadcast Division)

Present: Commissioners Sykes, Chairman, and Case.

Ratifications

The Broadcast Division ratified the following actions taken on the dates shown below:

Nature of Action—In the matter of the applications of Telegraph Herald, Dubuque, Iowa, for construction permit, Docket No. 3967, and Sanders Brothers Radio Station (WKBB), East Dubuque, Ill., for construction permit, Docket No. 4031, on which an order was heretofore entered on July 2, 1937, the Broadcast Division adopted and published a statement of facts and grounds for decision. Date of action 7-27-37.

(S) T. J. SLOWIE,
Secretary.

Before the Federal Communications Commission, Washington, D. C. 22272

Docket No. 3967

In the Matter of Telegraph Herald, Dubuque, Iowa, For Construction Permit

Docket No. 4031

Sanders Brothers Radio Station (WKBB), East Dubuque, Illinois, For Construction Permit

Submitted February 11, 1937. Decided July 2, 1937

Held, that the granting of an application for construction permit (Docket No. 3967) for a new station to be located at Dubuque, Iowa, would serve public interest, convenience and necessity.

496 Held, that the granting of an application for construction permit (Docket No. 4031) to move an existing station from East Dubuque, Illinois, to Dubuque, Iowa, and to install new antenna would serve public interest, convenience, and necessity.

APPEARANCES

Eliot C. Lovett on behalf of the Telegraph Herald; Louis G. Caldwell and Reed T. Rollo on behalf of Sanders Brothers Radio Station; Horace L. Lohnes and E. D. Johnston on behalf of Station WSPD; Tyler Berry on behalf of the Commission.

Statement of facts and grounds for decision

By the Commission: Broadcast Division, Commissioners Sykes, Chairman; Case, and Prall

The Telegraph Herald on January 20, 1936, filed an application for construction permit for a new station to be located at Dubuque, Iowa, operating on the frequency 1340 kilocycles with 500 watts, daytime. On May 14, 1936, Sanders Brothers Radio Station, licensee of Station WKBB, located at East Dubuque, Illinois, and operating on the frequency 1500 kilocycles with 100 watts–250 L. S., filed an application for construction permit to move the station to Dubuque, Iowa, and install a new antenna.

The Commission was unable to determine from examination of these applications that the granting of either would serve public interest, convenience, and necessity, and, pursuant to Section 309 (a) of the Communications Act of 1934, designated the same for public hearing before a duly appointed examiner. Appropriate notices of the time and place of the hearings and the issues to be determined in each case were served upon the applicants and other interested parties. Each of the applicants petitioned to intervene in the hearing on the application of the other. The petitions were granted. The hearings were called at the time and place provided in the respective notices and were thereupon consolidated, no objection being offered to such consolidation on the part of either of the applicants. The hearing was held on
497 September 14, 1936, before an examiner. The examiner in his report (No. I–310) recommend that the application of the Telegraph Herald, Docket No. 3967, be denied, and that the application of Sanders Brothers Radio Station (WKBB), Docket No. 4031, be granted. To this report exceptions were filed on behalf of both applicants. Oral argument was heard on February 11, 1937. The exceptions do not raise any questions not necessarily involved in the determination of the applications on their merits. Thereafter, on July 2, 1937, the Commission entered its final order granting both of the applications, the said order to become effective at 3:00 a. m., Eastern Standard Time, July 27, 1937.

GENERAL STATEMENT

Dubuque, Iowa, is situated in the northeastern portion of the state upon the west bank of the Mississippi River.

The States of Wisconsin and Illinois lie directly across the river. East Dubuque, the present location of Station WKBB, is directly east across the Mississippi River from Dubuque. The applicants propose to serve not only the City of Dubuque but Jackson, Dubuque, Delaware, and Clayton Counties in the State of Iowa, Grant County, Wisconsin, and Jo Daviess County, Illinois. The population of the City of Dubuque, according to the 1930 census, is 41,679. The population of the counties comprising the area proposed to be served, according to the same census, follows: Dubuque County, Iowa, 61,214; Clayton County, Iowa, 24,559; Delaware County, Iowa, 18,122; Jackson County, Iowa, 18,481; Grant County, Wisconsin, 38,469; and Jo Daviess County, Illinois, 20,235. The population is predominately rural and native white.

There are 592 wholesale and retail outlets in the City of Dubuque. Among its industries are meat packing, the manufacture of farm machinery, farm tools, and other commodities. The retail trade for 1935 approximated $17,122,800. The city has numerous primary and high schools, both public and parochial. Five colleges and universities are located in the area. In short, Dubuque is not only an important industrial city, but it is the thriving and prosperous center of a highly developed farm area devoted to stock and poultry raising, growing grain, and dairying. Abundant program material is available, including
498 orchestras, glee clubs, educational and scientific groups, many of whom have already expressed willingness to participate in the presentation of programs.

Station WKBB is the only station which delivers a signal of 10 mv/m in the business section of Dubuque. This station, however, does not cover the entire rural area described above. The record shows that there is need for broadcast facilities, centered in Dubuque, to serve the trade area of that city and the surrounding rural country.

With Respect to the Application of the Telegraph Herald

The applicant, Telegraph Herald, is an Iowa corporation. The original charter of the corporation was amended so as to authorize the corporation to do all things incidental to the conduct of radio broadcast business. The stockholders of the corporation are all citizens of the United States. The President of the company is Mr. Fred W. Woodward who owns approximately 51% of the stock. The applicant is legally qualified.

The assets of the corporation total $1,097,712.36, consisting of cash on hand, in banks and post-office deposits, notes receivable, accounts receivable, investments, real estate, machinery and equipment, furniture, fixtures, automobiles, insurance paid in advance, patents, franchise and goodwill, circulation structure, and stock. The liabilities, including accounts payable, reserve for depreciation of machinery, equipment, furniture and fixtures, surplus, capital stock, preferred and common, are fixed at $1,097,712.36. The current liabilities are fixed at $160,000, thus leaving a net worth in excess of $840,000.

The corporation is now engaged in the publication at Dubuque, Iowa, of the Telegraph Herald, a daily newspaper. The Telegraph Herald maintains a reportorial staff in the City of Dubuque of five reporters, one society editor, and has approximately 150 county correspondents as a news gathering organization. The circulation area of the paper is approximately that of the trade area of the City of Dubuque. This paper has the franchise for the Associated Press, United Press, and International News service.

The proposed station will be operated separately from the Telegraph Herald, but will have its financial backing;
499 and funds have already been set aside for the purpose of meeting such expenses as may be incurred in connection with the construction of the proposed station. A large number of advertisers have signified that they would be interested in using the station as an advertising medium. The applicant is financially qualified to construct and operate the proposed station, the cost of which will be discussed below.

The tentative plans of the applicant are to install a Collins Type 20-A transmitter with a quarter wave vertical radiator. An efficient ground system will also be installed. This will consist of a network of copper wires of not less than 120 radials spaced 3 degrees apart extending outward from the base of the radiator for a distance of at least 185 feet. They will be buried in the ground about six inches below the surface. The approximate cost of this equipment installed will be $25,000.00. The applicant proposes to construct two studios which will be soundproofed and acoustically treated. One of the studios will be sufficiently large to accommodate orchestras and large groups of people. The staff personnel of the proposed station will include a manager, a chief engineer, assistant engineer, a program director, chief announcer, two assistant announcers, three operators, one stenographer, and a sales force. The estimated monthly operating expense of the proposed station will be approximately $2,000.00. The applicant has shown itself to be technically qualified to operate the proposed station.

It is also estimated that the station will render good rural service with 500 microvolts per meter for a distance of thirty five miles from the transmitter. The evidence further shows that the station will lay down a signal of 10 millivolts per meter at a distance of approximately 7½ miles and 2 millivolts per meter at 18 miles. The 0.25 millivolt per meter signal would extend to a distance of 48 miles. The following population would be served: within the 10 millivolt per meter contour, 51,300; within the 2 millivolt per meter contour, 81,009; within the 0.5 millivolt per meter contour, 136,320; and within the 0.25 millivolt per meter contour, 292,900.

The applicant proposes to establish programs of special interest to the rural sections, which would include the
500 counties of Dubuque, Clayton, Delaware, and Jackson in the State of Iowa: Grant County, Wisconsin; and Jo Daviess County, Illinois. These programs will be prepared and presented by the agricultural agents and county school superintendents of each of these counties. The programs will be rotated on a six days a week basis between the six counties, each county agricultural agent and school superintendent giving a program for their respective counties at a suitable hour once a week. These programs will go on the air from the studio at Dubuque with the exception of special occasions when remote control will be established by the applicant at various points where the programs originate. These programs are intended to deal with the general educational problems applicable to rural communities and to the agricultural sections of the area proposed to be served.

The proposed station would render a good rural service as far northwest as Elkader, which is the county seat of Clayton County, Iowa. Delaware County, which is partially within the area the applicant proposes to serve, lies directly west of Dubuque and the western line of this county is approximately fifty miles from Dubuque. The proposed station would render a good rural service throughout the entire area of Jackson County, Iowa, which lies to the south of Dubuque, also in Jo Daviess County, Illinois, which is across the river and southeast of Dubuque. The station would also render good rural service in the greater portion of Grant County, Wisconsin, which lies across the Mississippi River and to the northeast of Dubuque. The service proposed is undoubtedly needed in the highly developed farming area described.

During the course of a typical week, the applicant proposes to devote 12¼ hours to education, 10⅙ hours to agriculture, 35½ hours to entertainment, 5 1/12 hours to religion, 10¾ hours

to news, and 1¾ hours to fraternal and civic broadcasts. There will be maintained at least four permanent remote controls to colleges, churches, and the United States Weather Bureau, supplemented by several temporary connection to special activities in the six counties described.

It is the purpose of the applicant to emphasize agricultural and educational programs, to broadcast religious pro-
501 grams offered by all denominations, to cooperate with and give free time to all civic, philanthropic, charitable, and fraternal organizations, the local county and state agencies, and to provide a forum for the discussion of questions of public concern. The regular programs will also include safety flashes, weather reports, morning devotions, organ recitals, market reviews, health talks, book reviews, sports reviews, children's hours, and other features, including news announcements. The tentative program submitted by the applicant covers a wide range of interesting subjects and is not only educational and instructive, but entertaining, and touches practically every phase of religious, social, business, and educational activities of interest to the community which it proposes to serve.

It is expected that there will be a slight degree of interference experienced within the ½ millivolt per meter contour of the proposed station, caused principally by Station WSPD, Toledo, Ohio, in the early morning and late afternoon hours. The magnitude of such interference will depend upon the season of the year. In view of the fact that Station WSPD is operating 5 kilowatts in the daytime and reducing power at least one hour previous to the time the proposed station would sign off, it would be expected that some degree of interference may be experienced on occasions within the 0.5 millivolt per meter contour of Station WSPD by the operation of the proposed station, but such interference would be slight and not sufficiently important to preclude the granting of this application.

With Respect to the Application of Sanders Brothers Radio Station (WKBB)

Sanders Brothers Radio Station is an Illinois corporation. It owns and operates Station WKBB, which was originally licensed for operation at Joliet, Illinois, but is now located at East Dubuque, Illinois. On June 29, 1934, the station was granted unlimited time on the frequency 1500 kc., using 100 watts power. On May 14, 1935, the authorized power was increased to 100 watts, 250 watts L. S., unlimited time, which is the present assignment of the station. Walter E. Klauer, the principal stockholder, is

President; his father, W. E. Klauer, is Vice President; and John D. Carpenter is Treasurer of the corporation. W. E.
502 Klauer is President, and Walter E. Klauer, General Manager of the Klauer Manufacturing Company, manufacturers of snow-removal equipment. This company is one of the largest industries in the City of Dubuque. Mr. Walter E. Klauer is also Vice President of the Klauer-Julien Hotel Corporation, which operates the Hotel Julien in Dubuque, one of the largest hotels in the State of Iowa. All of the stockholders of the Sanders Brothers Radio Station are citizens of the United States. There is no question as to the legal qualifications of this applicant.

The financial statement of Sanders Brothers Radio Station for the eight-month period ending August 31, 1936, shows that the total income of the corporation for that period was $21,453.57. The operating expense during that period was $16,546.90, leaving a net profit of $4,906.67. Against this net profit there is an item of depreciation of $2,594.72, and reserve for uncollected debts of $2,487.23, leaving a net loss for the operating period of $475.28. The statement further discloses that the station sustained a deficit for the year 1935 of $4,165.85, while the deficit for the eight months of 1936 was only $475.28, indicating an improved financial condition in the operation of the station. The current and fixed assets of the corporation are valued at $30,410.37. This includes cash in bank $5,874.67 and accounts receivable $11,144.31; less reserve of $2,509.23 for bad debts. The current liabilities are fixed at $30,410.37. This includes capital stock $25,000, less surplus deficits $4,641.13, plus accounts payable.

The estimated cost of the new equipment and expense of moving Station WKBB from East Dubuque, Illinois, to Dubuque, Iowa, includes: tower, $4,000.00; ground system, $500.00; building, $5,000.00; land for the transmitter site, $3,000.00; land improvements, $1,000.00; moving and installation of fixtures and equipment, $1,500.00; or a total of $15,000.00.

The estimated monthly cost of operating the station would be approximately $2,00.00. These figures are based on the profit-and-loss statement filed by the applicant in this case. The average monthly receipts of the station, based on the same statement, are approximately $2,600.00.

Walter E. Klauer, President of Sanders Brothers Radio Station, and owner of practically all of the outstanding stock
503 of the corporation, testified that he had an annual income in excess of $15,000 from his connections other than that of President of Sanders Brothers Radio Station, and that he had sufficient funds available to finance the removal of Station WKBB from East Dubuque, Illinois, to Dubuque, Iowa, should

this application be granted. The improved financial condition of the station, and the commitment of the principal stockholder that he will defray the cost of removal, when considered in the light of his available income and the probable financial support of the station, show that the applicant is financially qualified in the premises.

The applicant proposes to construct a vertical radiator 250 feet in height. The ground system will consist of 100 radials of one-inch copper ribbon, 250 feet long, equally spaced, and buried radially, the antenna at center, and also of a thirty-foot square ground screen placed immediately below the radiator to reduce the ground losses. The applicant will use its present transmitter, which was recently purchased and installed. It is apparent that the applicant is technically qualified.

The average radius of the 0.5 mv/m contour for Station WKBB, operating with its proposed antenna in its proposed location, about three miles south of Dubuque on the west side of the Mississippi River, would be approximately 32½ miles. Field strength measurements of the present signal of Station WKBB showed that in the center of the City of Dubuque the signal was 10 mv/m or greater; at the western limits of Dubuque it was 2 mv/m or greater; while 20 miles west it was 0.5 mv/m or greater. As a result of granting this application the station's antenna efficiency will be increased and consequently achieve a substantially larger coverage than now exists. Several thousand additional population will be served, aggregating approximately 60,000 persons within the 0.5 mv/m contour during daytime hours, and 10,000 persons within the 2 mv/m contour during night hours. There is an existing need that this large additional number of people receive broadcasting facilities of the kind and character proposed.

The regular program service of the station includes popular, classical, and folk music; morning studio church services; 504 educational broadcasts; sports and news announcements; agricultural talks by the County Agent for Dubuque County; and the dissemination of material supplied by the United States Department of Agriculture, Iowa State Extension Service, and the Illinois and Wisconsin Departments of Agriculture. Numerous other features of general interest to the public are also broadcast.

The applicant has offered the facilities of the station, without charge, to all of the educational institutions of Dubuque; to churches, civic organizations, law-enforcement officers, city officials, and to other officers and groups. In several instances the applicant has supplied remote-control equipment to aid in the dissemination of programs, particularly in the schools and colleges of Dubuque.

The programs offered the listening public by Station WKBB are of high standard, well-balanced, and meritorious.

Neither applicant has provided for a definite transmitter site. Each, therefore, will be required within two months after the effective date of this order to file applications for modifications of the grants made herein, specifying the exact transmitter locations and the antenna systems.

After careful consideration of the applications, the evidence adduced at the hearing, the Examiner's Report, the exceptions taken thereto, the oral argument, and the entire record, the Commission, Broadcast Division, was of the opinion, and so found, that public interest, convenience, and necessity will be served by granting the applications of Telegraph Herald and Sanders Brothers Radio Station for construction permits. Accordingly, on July 2, 1937, the Commission entered its final order granting the applications, subject to compliance with Rule 131, effective at 3:00 a. m., E. S. T., July 27, 1937.

I hereby certify that the foregoing is a full, true, and correct copy of the Statement of Facts and Grounds for Decision of the Federal Communications Commission in Docket No. 3967 & 4031.

[SEAL] T. J. SLOWIE,
Secretary.

By THEODORE PIERSON.

505 [Endorsed:] Received July 26, 1937. Docket Section. Docket Com. En banc 8/18/37.

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re Application of Telegraph-Herald (New) Dubuque, Iowa.
For Construction Permit

Operating Assignment Requested: Frequency, 1340; Power, 500 watts; Hours of Operation, Daytime.

Petition to extend effective date

Now comes Sanders Brothers Radio Station, licensee of Radio Station WKBB, East Dubuque, Illinois, and intervener in the above-entitled cause, by its attorneys, and respectfully petitions the Commission to extend the effective date of the decision and order on the above-entitled application made and entered July 2, 1937, for a period of 20 days from July 27, 1937 and in support thereof shows as follows:

(1) On July 2, 1937, through press release mimeograph No. 21598 the Broadcast Division announced that it had granted the above-described application, reversing the examiner, said decision and order to become effective July 27, 1937.

(2) Petitioner believes and therefore alleges that the Broadcast Division overlooked or failed to consider certain material facts contained in the record which, if given due consideration, would have resulted in a denial of the application, and petitioner therefore is desirous of filing a petition for rehearing pursuant to the provisions of Rule 106.31 of the Commission's Rules and Regulations and Section 405 of the Communications Act of 1934.

(3) Petitioner further believes and therefore alleges that no statement of facts supporting said decision has been made or released. Until such time as petitioner has had an opportunity to examine the statement of facts and grounds for decision it is unable to prepare properly said petition for rehearing.

506 (4) In the event petitioner is unsuccessful in obtaining a rehearing in accordance with the provisions of Rule 106.31 of the Commission's Rules and Regulations and Section 405 of the Communications Act of 1934, it will then appeal to the United States Court of Appeals for the District of Columbia pursuant to the provisions of Section 402 (b) of the Communications Act of 1934. Inasmuch as the 20-day period allowed by Rule 106.31 for the filing of a petition for rehearing and the 20-day period allowed in Section 402 (b) of the Communications Act of 1934 run concurrently, petitioner will not have sufficient time to examine the statement of facts and grounds for decision, to prepare its petition for rehearing and, in the event of a denial of such petition, to prepare and file its notice of appeal within the time allowed by law unless the effective date of the Commission's decision is extended as herein requested.

(5) The Commission has recently held that the filing of an appeal deprives the Commission of jurisdiction over a petition for rehearing (In re Application of Missouri Broadcasting Corporation, Docket 6869) and petitioner is therefore precluded from filing an appeal to the United States Court of Appeals for the District of Columbia until such time as the Commission has considered and acted upon the petition for rehearing.

Wherefore, the premises considered, petitioner respectfully requests that the effective date of the decision and order of the Broadcast Division in the above-entitled cause be extended for a period of 20 days from July 27, 1937.

SANDERS BROTHERS RADIO STATION (WKBB),
By REED T. ROLLO, *Its Attorney.*

Minute #551

2:30 P. M.—AUGUST 18, 1937.

Excerpt From Minutes of the Federal Communications Commission (General Session)

Present: Commissioners Sykes, Acting Chairman; Payne, Brown, and Case.

* * * * * * *

507 Hearing Docket

The Commission denied the petition of Sanders Brothers Radio Station (WKBB) requesting an extension of the effective date of the decision of the Broadcast Division entered July 2, 1937, granting the application of the Telegraph Herald for a new station at Dubuque, Iowa, Docket No. 3967.

* * * * * * *

[Endorsed:] Received July 30, 1937. Docket Section.

Federal Communications Commission (Broadcast Division), Washington, D. C.

Docket No. 3967

In re Application of Telegraph-Herald, Dubuque, Iowa. For Construction Permit To Operate on 1340 kc. daytime with 500 w. power.

Notice and demand

Sanders Brothers Radio Station, a Corporation, licensee of Station WKBB operating at East Dubuque, Illinois, a party to the proceeding upon the above-described application, by its attorneys, respectfully gives notice to and makes demand upon the Broadcast Division of the Commission to serve Station WKBB with certain documents hereinafter described below which it is believed were considered by said Division in arriving at its decision upon the Telegraph-Herald application, and in support thereof says:

(1) On July 2, 1937, the Broadcast Division made and entered its decision and final order granting the application of said Telegraph-Herald, reversing the Examiner, and said decision and order became effective July 27, 1937. The Examiner's Report, which was released November 24, 1936 (No. I-310), recommended "That the application of the Telegraph-Herald, Docket

3967, be denied." The applicant on December 9, 1936, filed its exceptions to the Examiner's Report and requested oral argument, and on February 11, 1937, oral argument upon the case was heard before the Broadcast Division.

508 (2) Station WKBB believes and upon such belief alleges that an answer to said exceptions in the nature of a further report upon the case by the Examiner was presented to the Broadcast Division by the Examining Department at sometime prior to oral argument upon the application.

(3) Station WKBB believes and upon such belief alleges that the Law Department of the Commission at sometime prior to the decision and subsequent to the oral argument presented a memorandum or report to the Broadcast Division for its consideration in making a decision upon the case.

(4) Station WKBB believes and upon such belief alleges that the Engineering Department of the Commission at sometime subsequent to oral argument and prior to decision presented a report upon the engineering features of the case to the Broadcast Division for its consideration in arriving at a decision.

(5) Said reports of the Examining Department, the Law Department, and the Engineering Department were submitted to the Broadcast Division for its consideration in making a determination upon the case, and such reports, which it is understood are confidential documents, have never been served upon or made available to Station WKBB.

(6) Such report of the Examining Department, if presented as alleged in Par. 2, was not served upon Station WKBB as provided in Rule 106.28 and Station WKBB has had no opportunity to be confronted with the facts therein contained or to make answer thereto.

(7) Such report of the Law Department, if presented for consideration by the Broadcast Division as alleged in Par. 3, is understood to be a report and recommendation upon the evidence in the nature of exceptions to the Examiner's Report. Since the Law Department entered an appearance for the Commission and participated in the proceeding upon the above-described application, said report was not served upon Station WKBB as required under Rule 106.28 of all parties participating in the hearing and Station WKBB has had no opportunity to be confronted with the facts contained in said report or to make answer thereto.

509 (8) Such report of the Engineering Department, if presented as alleged in Par. 4, deprived Station WKBB of an opportunity to be confronted with and cross-examine all the evidence considered by the Commission in arriving at its decision. A representative of the Engineering Department was presented

as a witness at the hearing and was cross-examined by counsel for Station WKBB.

Station WKBB believes that the Broadcast Division in granting the above-described application overlooked or failed to consider certain material evidence which, if given due consideration, would have resulted in a denial of the application. At such time as the Statement of Facts and Grounds for Decision are released, Station WKBB intends to file a petition for rehearing in order to present to the Commission en banc a full statement of all matters overlooked or not considered by the Broadcast Division. Station WKBB desires to be apprised of all matters including the three reports above-described, which were considered by the Broadcast Division in making a determination upon the case.

For the reasons above stated, Station WKBB herewith makes demand to be served within a reasonable time with any or all of the above-described reports of the Examining Department, Law Department or Engineering Department.

Respectfully requested.

SANDERS BROTHERS RADIO STATION,
By LOUIS G. CALDWELL,
By REED T. ROLLO,
By DONALD C. BEELAR,
Its Attorneys.

Minute #550

AUGUST 18, 1937—10:30 A. M.

Except from Minutes of the Federal Communications Commission (Broadcast Division)

Present: Commissioners Sykes, Chairman, and Case.

Hearing Docket

* * * * * * *

The Broadcast Division refused the demand for certain memoranda and recommendations submitted by the Examining, Engineering, and Law Departments of the Commission relative to the application of Telegraph-Herald, Dubuque, Iowa, for construction permit, Docket No. 3967, made by the Sanders Brothers Radio Station, a respondent.

510

* * * * * * *

[Endorsed:] Law Dept. Broadcast Division. Aug. 11, 1937. Received. Rec'd by registered mail addressed to Mr. Porter.

Federal Communications Commission (en banc), Washington, D. C.

Docket No. 3967

In Re Application of Telegraph Terald, Dubuque, Iowa, For Construction Permit To Operate on 1340 kc. daytime with 500 w. power.

Petition for rehearing

Sanders Brothers Radio Station, licensee of station WKBB, operating at East Dubuque, Illinois, on 1500 kc. unlimited hours with 250 watts day and 100 watts night, and a participant in the above-entitled proceeding, hereby makes application to the Commission, en banc, under Section 405 of the Communications Act of 1934 and Rule 106.31, Rules of Practice and Procedure, for a rehearing upon the decision and order of the Broadcast Division made and entered July 2, 1937, granting the application of the Telegraph Herald, Dubuque, Iowa, and in support thereof says:

Questions of Law

1. The Broadcast Division is without jurisdiction or power to render said decision and final order of July 2, 1937, without having, either at the time thereof or at any time prior thereto, made or formulated any findings of fact in support of its decision. Said order, not being supported by any findings contained therein or findings made previously or concurrently therewith, is void. Said decision, which was made July 2, 1937, and publicly announced on the same day (Release No. 21598), became finally effective July 27, 1937. After the final effective date, to wit,
511 on July 31, 1937, a document entitled "Statement of Facts and Grounds for Decision" (Release No. 22272) was served upon Petitioner. Said statement of supposed findings, which was adopted on July 27, 1937, was not prepared for presentation to the Broadcast Division until July 22, 1937, twenty days after the decision was made.

2. Petitioner is informed and believes and upon such information and belief alleges as a fact that the Broadcast Division in arriving at its decision considered certain confidential reports which were submitted by the Examining Department, the Law Department, and the Engineering Department of the Commission, as more fully set forth and described in Petitioner's Notice and Demand filed with the Broadcast Division on July 21, 1937, which is incorporated by reference herein. Said reports, if presented for consideration as alleged herein and in said Notice and Demand, were never served or made available to Petitioner as

provided in Rule 106.28, and Petitioner, in being denied an opportunity to be confronted with the facts contained in said reports and to make answer thereto, has been deprived of a full and fair hearing as required by due process of law and the Constitution of the United States, Fifth Amendment.

3. Said Statement of Facts and Grounds for Decision, even if considered as findings to support said decision and order of July 2, 1937, are arbitrary and capricious as a matter of law in that (1) there is no finding nor any substantial evidence upon which to base a finding of any need for the additional service proposed by Applicant; (2) there is no finding nor any substantial evidence upon which to base a finding that the service now rendered by station WKBB and by numerous other stations serving the Dubuque area is in any respect inadequate; and (3) there is no finding or any consideration of certain material evidence concerning the issue of Applicant's qualifications and the competency and reliability of the testimony presented by Applicant's principal witness (Mr. Arndt) as hereinafter stated. Said evidence, which covers several pages of testimony throughout the record and is reported at length in the Examiner's Report (I–310, pp. 8 & 9), is completely ignored in the supposed findings. Facts and circumstances which ought to be considered were excluded by the Broadcast Division.

512 4. At the time said decision was made on July 2, 1937, the only findings before the Broadcast Division were those contained in said report of the trial Examiner, who recommended "That the application of the Telegraph Herald, Docket No. 3967, be denied," and said findings, as a mater of law, can support only one conclusion, namely "The granting of this application will not serve public interest, convenience, and necessity." The Examiner found (p. 16):

"2. The applicant has failed to establish a need for additional daytime service in the area proposed to be served; nor does the applicant propose to render any new, novel, or different service from that already being received in that area. The major portion of the area proposed to be served by applicant is now receiving service from an existing facility located at East Dubuque, Illinois. The city of Dubuque is receiving at both its east and west city limits a signal of two millivolts per meter or greater from Station WMT at Waterloo, Iowa."

5. The Broadcast Division erred in failing to find by written findings made prior to entry of decision and issuance of the final order, or in failing to confirm the findings of the trial Examiner that the granting of the application of the Telegraph Herald will not serve public convenience, interest, or necessity.

Matters Erroneously Set Forth in Statement of Facts

6. The statement "To this report (Examiner's report) exceptions were filed on behalf of both applicants" (p. 2, par. 2) is incorrect. The Examiner's report recommended that the application of Station WKBB be granted and that the application of the Telegraph Herald be denied. Exceptions were filed on behalf of the Telegraph Herald. No exceptions were filed on behalf of Station WKBB.

7. The statement "The estimated monthly cost of operating the station (WKBB) would be approximately $2,000.00" is obviously incorrect. The evidence shows, and the examiner correctly reported, that the expected cost of operation would be approximately $2,000.00 per month.

8. The several statements concerning service area and coverage are incorrect insofar as they attempt to establish or infer
513 that the service or coverage of the Telegraph Herald station will be any more extensive than the service and coverage of station WKBB. For example, it is reported (p. 2, par. 4): "The applicants propose to serve not only the City of Dubuque but Jackson, Dubuque, Delaware, and Clayton Counties in the State of Iowa; Grant County, Wisconsin; and Jo Daviess County, Illinois."

Then on p. 3, par. 3, it is stated:

"Station WKBB is the only station which delivers a signal of 10 inv m in the business section of Dubuque. This station, however, does not cover the entire rural area described above."

Actually neither station will cover the rural area referred to. It is established by the evidence of record that station WKBB operating at a new location with the improved radiating system, as authorized, will render a signal in the order of .5 millivolt to ½ of Grant County, ½ of Lafayette County, ¾ of Jo Daviess County, 1/10 of Carroll County, 1/8 of Jackson County, ½ of Jones County, all of Dubuque County, 1/7 of Clayton County, ¼ of Clinton County and 2/5 of Delaware County (R. 165–167).

The service area of the Telegraph Herald station will be approximately the same as that of station WKBB.

It is noted that the statement of facts erroneously omits any reference to Jones County, approximately ½ of which will be covered by both stations.

The evidence shows that the Telegraph Herald station will render a signal in the order of .5 millivolt over a radius of approximately 35 miles. Station WKBB will render a daytime

signal in the order of .5 millivolt over a radius of approximately 32½ miles. The estimated population residing within the .5 millivolt contour of the Telegraph Herald station is 136,320 persons. The estimated population residing within the .5 daytime millivolt contour of station WKBB as found by the Examiner (p. 13, par. 3) is 154,000 persons.

Actually the daytime service areas of WKBB and of the proposed stations are practically coextensive. There is no basis on the record for any distinction as inferred in the
514 statement of facts. If any significance is to be attached to the slight difference between the two service areas, the difference is in favor of station WKBB.

The Telegraph Herald station will be subject to interference from station WSPD during the early morning and late afternoon hours. Station WSPD operates with 5,000 watts power daytime on 1340 kc. (the same channel requested by applicant) at Toledo, Ohio, which is 378 miles from Dubuque. The recommended separation is 400 miles (R. 197). The interference to the Telegraph Herald station will vary in intensity from day to day and from season to season and will be more severe during the winter months. On some occasions, as the Examiner found (p. 10), the Telegraph Herald station will be severely limited.

9. The statement "A large number of advertisers have signified they would be interested in using the station as an advertising medium" (p. 4, par. 1) is too indefinite to serve as a finding of expected commercial support or as a finding of a need for the proposed Telegraph Herald station under the circumstances of this case.

There is no evidence of any substantial character upon which a finding can be based that there is sufficient commercial support for a second radio station in Dubuque or upon which an estimate can be made of the expected advertising revenues of the proposed station. No estimate, nor any facts upon which to base an estimate of expected monthly income were presented by the Applicant (Ex. Rep. p. 5, par. 4). In fact the rates which the Telegraph Herald would charge for the sale of time on the station have not been determined (R. 81).

Dubuque, Iowa, has a population of 41,679 (1930). While communities of this size are generally considered adequate to support one radio station, it is the exception rather than the rule for two stations to be located in communities of less than 50,000. Out of the total of 656 radio broadcasting stations, there are only 9 communities with a population of less than 50,000 which have more than one radio station. In each instant the area surrounding these communities does not receive primary service from

other stations. In contrast, the Dubuque area receives primary service from twelve stations, including WKBB. Dubuque, Iowa, because of its size, may be considered prima facie as a
515 marginal community in which to locate a second radio station. Under these circumstances, we have a right to expect that an Applicant for a new station would be required to make a positive and convincing showing of sufficient commercial support.

The only evidence in this record of prospective commercial support is the statement by Mr. William J. Arndt, Circulation Manager of the Telegraph Herald, that some 60 merchants expressed a desire to advertise over the proposed station (R. 22). There is no evidence as to the amount of time which any of these concerns would be expected to use. It was admitted that half of the concerns are using or have used station WKBB. It was also admitted that rates were not discussed (R. 81). The evidence shows that out of the total of 65 concerns contacted, 33 have advertised over station WKBB, and of these, 18 have purchased time on the station during 1936. The 30-odd concerns which are not clients of Station WKBB were contacted by salesmen connected with station WKBB and adequate time is available on the station for their use (R. 282–284).

Insofar as the evidence on commercial support is concerned, there is not a single fact in the supposed findings which can stand as a reasonable basis for disregarding the Examiner's recommendation that the application be denied. The evidence presented by the Telegraph Herald on commercial support is considerably more fragmentary and indefinite than evidence on commercial support heretofore denounced by the Broadcast Division in other cases, e. g., the Broadcast Division in its statement of facts on the application of the Valley Broadcasting Company, Docket No. 3159, decided June 29, 1937, said:

"The applicants estimate a probable income from the station at about $2,800 monthly. The record discloses, however, that the partnership has no subscriptions for advertising services. There is some evidence in the record that several local firms would be interested in radio broadcast advertising but there is no definite evidence in the record as to the amount of actual business support which might be had from them or others. It is clear that the amount so estimated as probable monthly income is for the most part speculation, the wish being tfather to the thought."

516 Depositions were taken by the Applicant in Dubuque. It is significant that no evidence was presented in the depositions as to the expected commercial support for the Tele-

graph Herald station. The acceptance and approval by the Broadcast Division of the showing of commercial support in this case that some 60 concerns have "manifested a desire and willingness to advertise over our station" (R. 22) * * * "contingent upon the rate and the type of program we would produce" (R. 81) when rates have not been determined, when half of the concerns are or have advertised over the existing station and when no basis for an estimate of expected operating income has been given, constitute a substantial departure from the accepted standards of proof heretofore required by the Broadcast Division in similar cases.

In contrast to the hearsay and uncorroborated testimony of Applicant's witness concerning the willingness of a few concerns to purchase time on the Telegraph Herald station, there is the positive and uncontradicted evidence that station WKBB has been operating at a loss. The evidence shows (R. 213–215; WKBB Exh. No. 14) and the Examiner so found (p. 12, par. 1) that station WKBB although efficiently managed and using approved equipment, operated at a loss. The deficit accrued since the beginning through 1935 amounts to $4,165.85; for the first 8 months of 1936 the operating deficit was $476.28. The finding in the statement of facts (p. 6, par 2) of an "improved financial condition in the operation of the station" because WKBB's deficits for 1936 were less than for 1935, is poor authority for a conclusion that two stations will receive adequate commercial support. A deficit, regardless of amount, is still a deficit. Heretofore in numerous cases the Broadcast Division has considered the financial experience of broadcasting stations in determining the need for a new station in the same community. For example, In the matter of Eugene DeBogory et al., 2 FCC 336, 339, it was said:

"It was not shown in the hearing that either of the communities of Brownsville, Texas, or Denton, Texas, would support a broadcast station. On the other hand, it was shown that a sta-
517 tion had been financially unsuccessful in Brownsville. It was not shown that there was any promise of commercial support to either of the two stations and no showing was made as to a definite need for a station in either locality. It is not believed that either station would receive sufficient commercial support to enable it to render a service which would be in the interest of the public."

Under all of the circumstances of this case, the inability of station WKBB to operate at a profit is the best, if not the only evidence in the record as to the expected commercial support for radio advertising in Dubuque. In the face of this record, the action of the Broadcast Division in authorizing station WKBB to

improve its station and service at construction costs totalling $15,000 and at the same time to authorize the Telegraph Herald to construct a new station at a cost of $25,000 in a community which does not provide adequate financial support for one station is not only financially unsound and likely to impair the meritorious service now available in Dubuque, but is contrary to accepted principles of sound public utility administration. Approval of two construction permits including total capital outlays of $40,000 for radio facilities requiring $4,000 monthly income to sustain operation in a community which consistently has not provided adequate commercial support for one station appears prima facie as arbitrary and capricious action.

The action of the Broadcast Division, under the circumstances of this case, stands for the proposition that a newspaper operating non-competitively may be permitted to acquire a radio station and operate it at a loss in competition with an independent radio station which is rendering meritorious service but without showing a profit. Without more compelling reasons than are shown in this record, the Commission cannot reasonably find that public interest will be served by empowering the Telegraph Herald to take over the business of station WKBB and impair the livelihood of those connected therewith.

There is attached hereto and incorporated herein an affidavit setting forth certain facts material to the competitive situation and showing the operating deficits incurred by station WKBB since the date of hearing.

10. The statement "the service proposed is undoubtedly
518 needed in the highly developed farming area described" (p. 5, par. 1) is a gratuitous assumption, unsupported by any substantial evidence and in fact contrary to the evidence of record. The evidence shows, and the Examiner found (p. 16, par. 4) that "the applicant has failed to establish a need for additional daytime service in the area proposed to be served; nor does the applicant propose to render any new, novel, or difference service from that already being received in that area." There is no fact contained in the supposed findings which can reasonably justify a disregard of the Examiner's finding and recommendation. The evidence shows and the Examiner found that more than 50% of the persons testifying at the deposition proceeding on behalf of the Telegraph Herald have made use of facilities of station WKBB. Thirteen of the persons giving depositions for the Applicant have appeared from time to time on programs broadcast by station WKBB. Six of the remaining twelve deponents testified that organizations with which they were connected have used this station's facilities. A comparison of the program plans of the Telegraph Herald station with the actual

service record of station WKBB shows that the service proposed by the Telegraph Herald will duplicate the service now available from station WKBB and numerous other stations. The evidence shows and the Examiner found (p. 13, par. 6) that "programs offered the listening public by Station WKBB are of high standard, well balanced, and meritorious." The finding is confirmed in the statement of facts (p. 7, par. 5).

In addition to the service rendered by station WKBB, the Dubuque area receives primary daytime service in the order of ½ millivolt or better from stations WMT, Cedar Rapids, Waterloo, Iowa, WGN and WMAQ, Chicago, Illinois, and WHO, Des Moines, Iowa. Also stations WJJD, WENR, WBBM, Chicago, Illinois, WIBA, Madison, Wisconsin, WIND, Gary, Indiana, and WOI, the Iowa State College Station at Ames, Iowa, all render a signal which provides satisfactory service in the rural areas in the Dubuque community (R. 174, 150, 47; App. Exh. No. 10). The outstanding service rendered by many of these stations of particular interest to rural listeners is a matter of common knowledge, and the statement that the service proposed by the
519 Telegraph Herald is "undoubtedly needed" in rural areas of Dubuque is an assumption unsupported by the evidence and untrue in fact.

Matters Overlooked or Not Considered

11. Applicant, the Telegraph Herald, publishes the only daily newspaper in Dubuque, aside from the noncompetitive Catholic Daily Tribune which is published in Dubuque for national circulation (R. 54, 219). The Telegraph Herald, since it took over its competitor, the Times-Journal in 1927 (R. 55), has dominated the field of news and advertising in Dubuque. Notwithstanding the currently important question of newspaper ownership of radio stations, important evidence adduced by Petitioner at the hearing reflecting upon the qualification of the Telegraph Herald to operate the proposed station in the public interest, is glossed over with the single statement (p. 4, par 1). "The proposed station will be operated separately from the Telegraph Herald, but will have its financial backing; * * *."

The evidence shows, and the Examiner found, that the Telegraph Herald is publishing advertisements of alcoholic liquors in violation of laws of the State of Iowa (pp. 8 & 9).

Applicant's witness (Mr. Arndt) testified (R. 87):

"Q. With reference to the policies to be adopted by the station, if I understood you correctly on your direct testimony, the station will be conducted along the same general lines as the newspaper, is that correct? A. Yes; insofar as they are applicable to the station."

At hearing on September 14, 1936, WKBB introduced seven issues of the Telegraph Herald dated August 9, May 20, 28, 29, 31, June 12, and July 15, each of which contained liquor advertisements. Applicant's witness (Mr. Arndt) volunteered the explanation (R. 94):

"I might state we have since discontinued the liquor advertising."

The date of discontinuance was fixed at six weeks prior to the hearing (R. 95).

Thereupon, issues of the Telegraph Herald, dated September 9 and 10 (one week before the hearing), each of
520 which contained liquor advertisements were presented to the witness. He then qualified his previous testimony with the explanation (R. 96):

"One of those must have slipped in."

When questioned as to the accuracy of the date of discontinuance previously stated, the witness said (R. 97):

"I told you it was recently discontinued but I do not know the exact date."

On the following day (September 15) the witness, under redirect examination, was invited to give a further explanation on the Telegraph Herald's acceptance of liquor advertisements. The witness explained (R. 120):

"My recommendation (to discontinue liquor advertising) was based on the fact that inasmuch as there was some question as to the propriety of this type of advertising from the liquor control commission, we discontinued this type of advertising in view of those circumstances. * * * Well liquor advertising has been discontinued but certain existing and outstanding contracts had to be considered by reason of certain provisions of the advertising contracts.

"Q. If these existing contracts expire will they be renewed?—A. Absolutely they will not be renewed."

What are the facts as of this date?

Actually space sold for liquor advertisements in the Telegraph Herald is believed to have increased since the date of hearing, and advertisements not running at the date of hearing have since appeared in the paper. An affidavit showing the space sold before and since the hearing is attached hereto and incorporated herein. On August 13, 1937, for example, the Telegraph Herald published a quarter-page liquor advertisement of Schenley's Cream of Kentucky Straight Bourbon Whiskey, at 79 cents a pint, $1.50 a quart. A copy of the page containing the advertisement is attached hereto and incorporated herein. The brand advertised on August 3, 1937, is different from any of the brands published in the several issues introduced in evidence. (WKBB Exh. No. 1 & 2.)

Newspaper advertising contracts according to Standard Rate and Data are accepted by the Telegraph Herald for one year and if such contracts were not accepted or renewed since six weeks
521 prior to the date of hearing, the recent advertisement was accepted under a new contract or a renewal, which, it was testified, would not be done.

The Telegraph Herald at the present time is soliciting the acceptance of advertisements of alcoholic beverages. The current July 1937 issue of Standard Rate and Data contains the significant statement of the Telegraph Herald's present policy:

"Advertising of alcoholic beverages accepted."

Under these circumstances, the unequivocal and positive statement by the witness (Mr. Arndt) that liquor advertisements "absolutely will not be renewed" is unreliable and incorrect.

Aside from the factor of unfair competition, it is relatively unimportant whether or not the proposed Telegraph Herald radio station may or may not accept liquor advertisements. The important fact is that Mr. Arndt, the circulation manager, is either not competent to testify what the policies of the Telegraph Herald are or his testimony at the time it was given was incorrect. It may be concluded from the above facts that the Telegraph Herald thinks more of the revenues which it derives from advertisements of alcoholic liquors than it does of keeping its promissory representations given under oath by one of its officers to the Commission. If the manner in which the Applicant disregards the laws of the State of Iowa in the publication of liquor advertisements is any criterion of the manner in which the Applicant may be expected to comply with the Communications Act of 1934 and the regulations of the Commission, it is submitted that the Applicant has not established its qualifications to operate the proposed station in the public interest.

12. The evidence shows and the Examiner so found, that the Telegraph Herald has consistently refused to publish radio programs of station WKBB. The Telegraph Herald did not carry any story on the opening of station WKBB in 1933 (R. 88), but freely admitted that if the Telegraph Herald station is authorized to operate that will be news which the paper will publish. The Telegraph Herald while refusing to publish radio programs of station WKBB has published daily without charge programs of out-of-town stations (R. 219):

"Q. Is it correct that the Telegraph Herald is the only daily nonsectarian newspaper in Dubuque?—A. Yes.

522 Q. Does that newspaper publish the program listings of your station?—A. No; they have never published any program listings of our station.

Q. How do you publicize your program listings?—A. Well, we have had to resort to various methods. We have a local labor

paper in Dubuque, that is a weekly of small circulation, and they publish our programs. The Catholic Daily Tribune publishes some of our programs, but that is a national sectarian paper and has a very small circulation in our territory of Dubuque and Dubuque County."

In April 1936 at the time WKBB became affiliated with the Affiliated Broadcasting Company, the Telegraph Herald was requested to publish the radio program (R. 219–293):

"By the EXAMINER:

Q. Did a copy of that letter go to Mr. Woodward?—A. A copy of the letter was sent to Mr. Woodward.

Q. Did you ever get a reply from him?—A. I never had any reply.

Q. Have your local programs ever appeared in the Telegraph Herald?—A. They have not.

Q. Columns?—A. They have not since my time there.

Q. I am talking about since you have been there.—A. Never.

Q. Have you ever submitted any of them?—A. The local programs? No.

Q. Why didn't you?—A. Because I had understood the attitude of the Telegraph Herald, and when I attempted to get even chain programs published I thought there would be no use sending local programs if they would not publish the chain programs.

Q. Aren't there other chain programs published in the paper?—A. The National and Columbia are published in the paper."

The refusal of the Telegraph Herald to publish the radio programs of station WKBB has impaired the effectiveness of its public service. Station WKBB has been compelled to publish leaflets and hand-outs in order to notify the public of its sustaining public-service programs (R. 219):

"Q. Do you ever resort to leaflets for publicizing your programs?—A. We do not, but some of the public-welfare
523 and human-welfare organizations, such as the Community Chest and the Visiting Nurses Association, and some of the charities, sometimes use that method of publicizing their programs, in addition to occasionally buying space in the Telegraph Herald—that is, speaking of the organizations, but we have never bought any space in the Telegraph Herald ourselves."

The refusal of the Telegraph Herald to cooperate with station WKBB in publishing even its sustaining programs of community interest, when associated with its noncompetitive position above referred to, supports a conclusion that the station requested by the Telegraph Herald will be operated primarily for its own interests.

13. On July 24, prior to the effective date, Petitioner filed a Petition to Extend the Effective Date in order to allow sufficient

time after the release of the Statement of Facts and Grounds for Decision within which to petition for rehearing and obtain consideration thereof before expiration of the appeal period. No action has been taken upon this Petition.

14. On July 29, 1937, Petitioner filed a Notice and Demand with the Broadcast Division for the production of certain reports believed to have been presented to and considered by the Broadcast Division in making the decision granting the application of the Telegraph Herald. To date no response to this Notice and Demand has been received.

Wherefore, the Petitioner prays:

1. That the Commission, en banc, at its earliest convenience and prior to consideration of this petition upon its merits, extend the effective date of said decision and order of the Broadcast Division. Petitioner is uncertain whether or not the time within which an appeal may be taken from said decision expires on August 16, 1937 (20 days after the effective date), and unless the effective date is extended there will be insufficient time to consider this petition on its merits.

2. That the Commission issue a rule requiring the Broadcast Division to produce and make available to Petitioner any or all of the several reports heretofore described in said Notice and Demand filed July 29, 1937.

524 3. That issuance of the construction permit to the Telegraph Herald be withheld until such time as this Petition is finally acted upon, or if such permit has been issued, that the same be recalled.

4. That the Commission grant this Petition for Rehearing, as herein requested.

5. That the Commission grant the Petitioner such other and additional relief as may seem proper under the circumstances.

SANDERS BROTHERS RADIO STATION,
(STATION WKBB)

By (Sgd.) LOUIS G. CALDWELL,
Louis G. Caldwell,
(Sgd.) REED T. ROLLO,
Reed T. Rollo,
(Sgd.) DONALD C. BEELAR,
Donald C. Beelar.

Verification

STATE OF IOWA,
County of Dubuque, ss:

Walter E. Klauer, being first duly sworn on oath, deposes and says that he is the President of Sanders Brothers Radio Station, that he has read the foregoing Petition for Rehearing, and that

the facts stated therein are true and correct of his own knowledge except to such matters as are stated upon information and belief, and as to these matters he believes them to be true.

WALTER E. KLAUER.

Subscribed and sworn to before me this 9th day of August, 1937.

Notary Public.

My Commission Expires July 4, 1939.

Affidavit of Service

CITY OF WASHINGTON,
District of Columbia, ss:.

Beatrice J. Hegg, having been first duly sworn on oath, deposes and says that she has this day sent by registered
525 mail a copy of the foregoing Petition for Rehearing to Eliot C. Lovett, of the Telegraph Herald, 729 15th St., NW., Washington, D. C.; Horace L. Lohnes & E. D. Johnston, of Station WSPD, Munsey Building, Washington, D. C.; and George B. Porter, Federal Communications Commission.

(sgd.) BEATRICE J. HEGG,
Beatrice J. Hegg.

Subscribed and sworn to before me this 10th day of August 1937.

(sgd.) MIRIAM KOONTZ,
Miriam Koontz,
Notary Public, D. C.

My Commission Expires January 3, 1941.

Affidavit

STATE OF IOWA,
County of Dubuque, ss:

Walter E. Klauer, being first duly sworn, deposes and says that he is President of Sanders Brothers Radio Station, a corporation, licensee of Station WKBB. The business of the corporation is exclusively that of operating Station WKBB, which has rendered radio broadcast service to East Dubuque, Illinois, and Dubuque, Iowa, and surrounding area continuously since December 1, 1932. The corporation has outstanding $25,000.00 of its total authorized capital stock amounting to $40,000.00. The stockholders are Walter E. Klauer, 247 shares; W. H. Klauer, affiant's father, 1 share; James D. Carpenter, 1 share; and E. A. Deutmeyer, 1 share. The corporation employs 10 persons at an average monthly payroll of $1,350.00.

During the year 1934 Station WKBB sustained a deficit of $1,847.91. During 1935 the Station sustained a deficit of $2,317.94. During 1936 the Station sustained a deficit of $1,194.41. Total deficit for the years 1934, 1935, and 1936 was $5,360.26, as evidenced on respective Federal Income Tax returns. During the first seven months of 1937 Station WKBB has incurred a deficit of $1,243.32, not including any allowance for depreciation. If a reasonable allowance for depreciation is included, the deficit for the first seven months of 1937 as $4,043.32.

526 At no time since the corporation began operating the Station at East Dubuque, Illinois, have any dividends been declared. From January 1, 1934, to April 1, 1936, the affiant, as president of the corporation, devoted approximately 75% of his time to the management and operation of Station WKBB. Since April 1, 1936, affiant has devoted approximately one-half of his time to the Station. At no time has affiant taken any money out of the corporation in the way of a salary for the time devoted to the management of the Station.

Since the date of the hearing Station WKBB has rendered radio advertising service over the station to *66* local accounts. These accounts have provided revenue during the eleven-month period totalling $28,668.07, or an average gross income of $2,606.19 per month. A careful check of the time of day during which the several commercial programs were broadcast over Station WKBB reveals that 70% of its gross income is derived from daytime operation. Although Station WKBB renders a full-time service to this community, the proposed Telegraph Herald station, which will operate only daytime hours, will compete with WKBB during the most lucrative hours of operation.

Of the 60-odd concerns which the Telegraph Herald is relying upon for commercial support (T-H Ex. No 6), *39* of these concerns are or have been clients of Station WKBB. During the year 1934 Station WKBB derived $7,003.31 gross income from 27 of the aforesaid 60-odd concerns. During 1935 Station WKBB derived $10,039.62 gross income from 21 of the aforesaid 60-odd concerns. During 1936 Station WKBB derived $7,205.32 gross income from 19 of the aforesaid 60-odd concerns. During the first seven months of 1937 Station WKBB derived $5,219.87 gross income from 14 of the aforesaid 60-odd concerns.

Since the date of the hearing Station WKBB has derived $7,151.67 gross income from 16 of the aforesaid 60-odd concerns. Prior to the hearing these concerns spent a total of $22,316.45 in the purchase of time and programs over Station WKBB, or an average monthly income both before and since the hearing amounting to approximately $700.00.

The capital stock of the corporation held by affiant represents an investment of approximately $25,000.00 paid in
527 cash by him to the former owners during 1933 and 1934.

Since the location of Station WKBB at East Dubuque and the beginning of operation there, the corporation has expended an additional total of approximately $16,163.89 for improvements and purchase of equipment and supplies, and a total of approximately $37,368.58 to defray payroll expenses of persons connected with the station. Since January 1, 1934, and especially during the first year of operation at East Dubuque, the affiant has at various times personally advanced money to the corporation for the purpose of defraying payroll expenses, and has personally absorbed travel and other expenses in connection with the operation and management of the Station. The total of these advances is well in excess of $5,000.00. At no time has the cash position of the corporation permitted him to withdraw the moneys advanced.

If Station WKBB is deprived of the income derived from the several concerns upon which the Telegraph Herald relies for commercial support, the average monthly operating deficit of Station WKBB will be increased by approximately 300% per month. If the available and prospective daytime accounts are required to be divided between Station WKBB and the proposed Telegraph Herald station, neither station can be operated at a profit and it is estimated that Station WKBB will be required to operate at a monthly deficit of approximately $1,200.00. If these conditions prevail, it will no longer be possible or profitable for Station WKBB to continue operation.

WALTER E. KLAUER.

Subscribed and sworn to before me this 9th day of August 1937.

[SEAL] C. P. McDONALD,
Notary Public.

My commission expires July 4th, 1939.

Affidavit

STATE OF IOWA,
County of Dubuque, ss:

Walter E. Klauer, being first duly sworn, deposes and says that he is President of Sanders Brothers Radio Station, a corporation, licensee of Station WKBB.

528 During the twelve months prior to September 16, 1936, there appeared in the Dubuque Telegraph Herald, a newspaper published at Dubuque, Iowa, numerous advertisements of alcoholic liquors.

The total space devoted to liquor advertising during this twelve-month period was approximately 1,320 column inches, or 18,480 lines.

Since September 16, 1936, the amount of space devoted to the advertising of alcoholic liquors has increased by more than 200%. A careful check of the advertising columns of the Telegraph Herald during the eleven months from September 16, 1936, to August 6, 1937, inclusive, reveals that the amount of space devoted to the advertising of alcoholic liquors in the Telegraph Herald during this period has been in excess of 4,200 column inches, or in excess of 58,800 lines.

Since September 16, 1936, the Telegraph Herald has published the advertisements of 14 brands of alcoholic liquors, representing the products of 7 manufacturers or distributors, which did not appear in its advertising columns during the twelve months prior to September 16, 1936.

WALTER E. KLAUER.

Subscribed and sworn to before me this 9th day of August 1937.

[SEAL] C. P. McDONALD,
Notary Public.

My commission expires July 4th, 1939.

531 [Endorsed:] Received Federal Communications Commission. Mail and Files Section. 1937 Aug. 30, A. M. 8:30.

[Endorsed:] Federal Communications Commission. Aug. 28, 1937. Office of Secretary.

[Endorsed:] Received Aug. 30, 1937. Docket Section.

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re Application of: Telegraph Herald (KDTH), Dubuque, Iowa. For Construction.

Opposition to petition of station WKBB for rehearing

The Telegraph Herald, permittee of Station KDTH, authorized to operate daytime only in Dubuque, Iowa, with 500 watts power on 1350 kilocycles, opposes the petition filed by Sanders Brothers Radio Station, licensee of Radio Station WKBB, for a rehearing upon the above-entitled application, and states:

A. As to Matters alleged to have been erroneously set forth in the Statement of Facts

The most significant statements made by petitioner under this heading, and those upon which its original petition to intervene

July, 1937, Both 'Wet' and 'Cool' Compared to 1936

HERE'S ANOTHER PICTURE-QUERY

And Yesterday's Cave Has Interesting History

HOW WELL DO YOU KNOW YOUR DUBUQUE?

BUT 'TWAS DRY AND HOT AT TIAT

Mean Temperatures Above Normal, Rain Below

PLAN TO REDUCE BANKS OUTLINED

FDIC Would Weed Out 2,800 Unprofitable Ones

Looking Backward

Past Events in City And the Nation

NON-SWIMMERS CAN SAVE LIVES

Tips on Rescuing Drowning Persons From Water

24TH SUMMER SESSION ENDS

18 Receive BA Degrees at Columbia Exercises

Future of Iowa REA Program Will Be Set

Record of Murderer Studied By Kraschel

Six Persons Burned To Death in Cabin

Tall Corn Blamed For 2 Auto Crashes

Clinton Man Dead Due to Crash Hurts

Emile Dionne Mildly Ill Due to the Heat

Grinnell Boy Held In Death of Girl

Styled At Our

The famous "Double-Rich" Kentucky straight Bourbon!

If you read between lines, you'll know here is a treat you will not want to miss!

SCHENLEY'S

U. S. GOVERNMENT PRINTING OFFICE 1938

Have you Eyes that can read between lines?

The famous "Double-Rich" Kentucky straight Bourbon!

If you read between lines, you'll know here is a treat you will not want to miss!

SCHENLEY'S Cream of Kentucky

PINT 79c QUART $1.50

KENTUCKY STRAIGHT BOURBON WHISKEY

Only at LANDON'S in Dubuque

THE Heart o' the Pelt LABEL

ASSURES YOU OF QUALITY

The Waves Say . . .

Styled At Our Permanent Wave Sale

10% to 25% off—Limited Time Only!

$7.50 Zambo Machineless Wave	NOW $4.95
$9.00 Vita Locks Permanent Wave	NOW $6.75
$5.00 French Steam Oil Permanent	NOW $3.50

Roshek's Beauty Salon

The lone person stand atop the game hill with only a lonely home used to perch on the end does Can you set among it us? For further details, and the answer to yesterday's picture-question, see the sports-loving sports.

Future of Iowa REA Progress Will Be Set

Summer Last Year's

Tall Corn Blamed For 2 Auto Crashes

Chicken Man Dead Due to Crush Hurts

Record of Murderer Studied By Kruschel

Six Persons Burned To Death in Cabin

Emily Dieman Mildly Ill Due to the Heat

Colesmill Boy Held In Death of Girl

24TH SUMMER SESSION ENDS

18 Receive BA Degrees at Columbia Exercises

Extradition Request For Golfer Studied

in these proceedings was based and granted, concern the economic effect which the proposed Telegraph Herald station (KDTH) would have upon the operation of WKBB. The petitioner not only reiterates the testimony given by its president, W. E. Klauer, that Station WKBB had been operating at a loss, but it seeks to inject into the record an affidavit of the said Klauer attached to the petition and containing an elaboration upon and a continuation of the previous attempt to show that Station WKBB has been and is now operating at a loss.

An examination of the said affidavit is supposed to show that WKBB sustained a deficit of $1,847.91 for the year 1934, a deficit of $2,317.94 for the year 1935, $1,194.41 for 1936, and
532 $1,243.32 for the first seven months of 1937. The affidavit contains the statement that the "Total deficit for the years 1934, 1935, and 1936 was $5,360.26, as evidenced on respective Federal Income Tax returns."

These emphasized assertions of petitioner as to its losses in operating Station WKBB, especially when considered in connection with the anxiety of the petitioner to spend approximately $15,000 on construction work, warrant, if they do not actually require, an examination of the representations made by the petitioner in its various applications to the Commission for renewal of its broadcasting license.

On April 30, 1934, the said W. E. Klauer, as President of the petitioner, swore to an application, which was later filed with the Commission, for the renewal of the WKBB broadcasting license and, in answer to the question as to the average amount of money spent during the preceding six months for talent he answered "$500," and, "for other purposes $1,500," making a total average monthly expenditure of $2,000. To the question immediately following as to the average gross income of the station per month for the preceding six-month period the answer was $3,000. The simplest arithmetical computation discloses that the station must have enjoyed a monthly operating profit of $1,000.

The renewal application sworn to by Klauer as President on October 26, 1934, showed increasingly successful operation. The expenses continued as before—$500 for talent, and $1,500 for other purposes, or a total of $2,000, but the average monthly gross income was $3,500, resulting in an average operating profit of $1,500 for each of the preceding six months.

The next renewal application was sworn to by Klauer as President on April 30, 1935, and showed $300 for talent and $1,200 for other purposes, making a total monthly expenditure of $1,500. The reported income was $2,500, so that there was an average monthly operating profit of $1,000 for the preceding six-month period.

On October 12, 1935, the said Klauer, as President, swore to another application for renewal of license. This time he also stated that $300 were spent for talent, but reported an increase to $1,500 for other purposes, or a total of $1,800. The
533 average monthly gross income was still reported as $2,500. The average monthly operating profit for the six-month period was therefore $700.

On April 18, 1936, Klauer, as President of the petitioner, again swore to a renewal application. The expenditures for talent and other purposes, and the average monthly gross income, were reported to be the same as in the next preceding application, namely, a total of $1,800 spent as compared with $2,500 income, making an operating profit of $700 per month for the six months immediately preceding.

On October 28, 1936, J. D. Carpenter, as General Manager and Treasurer of the petitioner, swore to the application for renewal of license. Talent was still shown to cost $300 per month, but the expenditures for other purposes were increased to $1,800, making a total of $2,100. However, the average gross income per month was shown to have increased to $2,800, so that the average monthly operating profit for the six months immediately preceding was still $700.

On April 28, 1937, the said W. E. Klauer, as President of the petitioner, swore to a renewal application and reported that the talent costs had increased to $400 and the expenditures for other purposes to $2,200, or a total of $2,600. The average gross income per month was reported as having increased to only $2,900, making an operating profit of $300 per month for this six-month period.

The following analysis of the foregoing reports of income and expenditures as contained in the sworn applications upon which the Commission relied when it granted the regular renewals of the WKBB license is very illuminating, especially when compared with the recent affidavit of the said Klauer in support of the instant petition for rehearing wherein yearly deficits are set forth "as evidenced on respective Federal Income Tax returns."

WKBB Average Operating Profits Shown by Sworn Renewal Applications

	1934	1935	1936
January through March	$3,000	$3,000	$2,[illegible]
April through September	5,000	4,200	1,20[illegible]
October through December	3,000	2,100	[illegible]
Average Total Profits	11,000	9,300	7,20[illegible]

534 WKBB Deficits Shown by Present Klauer Affidavit and "Evidenced on Respective Federal Income Tax Returns"

	1934	1935	1936
Total Deficits	$1,847.91	$2,317.94	$1,194.41

The Klauer affidavit of August 9, 1937, also alleges a deficit of $1,243.32 for the first seven months of 1937, and states that, if depreciation were included, the deficit would be $4,043.32. This amounts to an average monthly operating deficit of $177.61, and an actual deficit (including depreciation) of $577.61. In the last renewal application, on the other hand, Klauer swore that for the first three months in 1937 there was an average monthly expenditure of $400 for talent and $2,200 for other purposes, or a total of $2,600, and an average gross income of $2,900, which would leave an average monthly operating profit of $300.

It is impossible to determine whether or not the expenditures "for other purposes" listed in the various renewal applications take into consideration any depreciation. They no doubt should, and it would appear that they do if a previous affidavit made by Klauer on April 15, 1935, may be given credence. That affidavit was filed with the application dated December 18, 1934, for the consent of the Commission to the transfer of the control of the petitioner corporation from R. W. Hoffman to Walter E. Klauer, and accompanied a balance sheet as of December 31, 1934, and a profit and loss statement covering the months of October, November, and December 1934. The latter statement shows an "operating profit" of $126.35, which is the result of subtracting from "sales" of $5,263.90 the expenditures totaling $5,137.55 for labor, power and light, telephone, "other expense," rent, depreciation ($1,547.10), and bad debts. The depreciation was obviously at a monthly rate of $515.70, and if this had not been deducted to determine the "operating profit" the latter would have been $1,673.45, or an average profit of $557.81 per month. Even this does not compare very favorably with the average monthly operating profit of $1,000 indicated by the renewal application including this same three-month period and dated April 30, 1935. Nor does the average monthly "operating profit" of $42.11 ($126.35 for the three-month period) after deducting depreciation, compare very favorably with the average monthly deficit of $153.99 indicated by Klauer's recent affidavit as having been reported for income-tax purposes and, apparently, taking depreciation into account.

535

The petitioner, in spite of the recorded, and quite proper, tendency of its president to consider depreciation when deter-

mining operating profit, should now claim that the difference between the figures appearing in the sworn renewal applications and those in the "respective Federal Income Tax returns" is occasioned by the failure to deduct depreciation from the former, there nevertheless remain obvious and inexplicable discrepancies. For example, the average monthly profits for 1934, as shown by the renewal applications, indicate a profit of $15,000 for the year, whereas the now alleged deficit was $1,847.91. In order to harmonize these figures it would be necessary to deduct depreciation of $16,847.91 in 1934. Similarly, it would be necessary to deduct depreciation of $11,617.94 in 1935, and $8,394.41 in 1936. Such deductions would be entirely unwarranted by the value of the fixed assets. The balance sheet attached to Klauer's said affidavit of April 15, 1935, in connection with the application for transfer of control of WKBB lists the fixed assets at $22,356.96. The affidavit of R. W. Hoffman dated April 27, 1935, and attached to the same application gives $15,062.50 as the depreciated value of the equipment. At the hearing the fixed assets were represented (WKBB Exhibit #13) as having a depreciated value of $15,900.64 on August 31, 1936. The last renewal application (dated April 28, 1937) includes a balance sheet as of April 1, 1937, which lists the fixed assets, as depreciated, at $14,622.68. It will be remembered, as shown by the foregoing references to the recorded statements of the petitioner, that the highest monthly depreciation charge was $515.70, as indicated on the profit-and-loss statement for the last three months of 1934, which would make the then annual rate $6,188.40. The more recent depreciation rate was $400 per month, as shown by the Klauer affidavit of August 9, 1937, covering the first seven months of 1937, or an annual depreciation rate of $4,800. Under these circumstances there is no room whatsoever to argue that $16,847.91, or $8,394.41, or any approximation thereof, could be properly used as
536 an annual deduction for depreciation to help to establish any of the now vaunted deficits of the petitioner.

In view of the many inconsistent statements made upon behalf of the petitioner, it is difficult, if not impossible, to know exactly what to believe.

Walter E. Klauer, as President of Station WKBB, testified (Record, pp. 234, 241-243) at the hearing, in an obvious effort to cast reflection upon Mr. Woodward, President of the Telegraph Herald, that in January 1934, one month after he became affiliated with WKBB, he was suddenly dropped from the committees of the Dubuque Chamber of Commerce, and that Mr. Woodward was President at that time; that he (Klauer) acted upon the Chamber of Commerce committees up to 1934 and then was dropped from all committees for that year; that Mr. Woodward was

President of the Chamber of Commerce for two years, his term expiring in 1935; and that when his (Woodward's) successor was appointed, Klauer was again given committee assignments. At the oral argument, Mr. Reed T. Rollo, attorney for Station WKBB, agreed, in his usual gentlemanly manner, to stipulate any facts which would be necessary to correct the foregoing statements. Accordingly, a stipulation was signed by the parties and filed with the Commission on March 2, 1937, to the effect that Mr. Woodward was President of the Chamber of Commerce for two years, his term expiring in February 1934; that Klauer served on the Air Service Committee during that entire period, his assignment expiring in February 1934, at the same time that Mr. Woodward's term as President expired; and that during the first year of the succeeding administration, Klauer received no committee assignment.

Admittedly, the incorrect statements made by Klauer regarding his committee assignments were of minor importance, but when viewed in connection with the misstatements made as to the operating success of the station it would seem that he considers almost anything justifiable as long as it may result in defeating the plans of the Telegraph Herald to establish a radio station in that area. However, the statements made on the renewal applications, and those said to have been made on the income-tax returns, seem worthy of special consideration.

537 According to Klauer, the station showed a deficit on its income-tax returns and, therefore, it must be assumed, was liable for no income tax. In its applications for renewal of licenses it showed a consistent operating profit, and, according to Klauer's apparent definition of "operating profit," the determination thereof took into consideration depreciation.[3] But even though depreciation were not considered, it is quite apparent that for the calendar years 1934, 1935, and 1936 the station made a profit. That is, of course, if the sworn applications for renewal of license may be considered correct. It is probably reasonable to assume that either the profits reported to the Commission or the deficits reported to the Internal Revenue Bureau must be right. By the same token one of these reports must be wrong. Of course, if the erroneous statements were made in the income-tax returns, that is a matter to be taken up by the Treasury Department, although, if it be established that such erroneous statements were made, it is something that might well be considered by the Communications Commission in determining the present qualifications

[3] Klauer's interpretation of the deficit is significant. He stated (R. 252), in answer to a comment of the Examiner that there was a deficit of $4,165.85 at the close of business in December, 1935, that this was a "surplus deficit." The Examiner then remarked, "I assume that is made up from surplus?" Klauer replied, "It is made up of losses, the station has not shown a profit to date."

of the petitioner to continue in operation. Certainly if the false statements are found to have been made in the applications to the Commission, which applications have been the basis for successive renewal licenses issued to the petitioner, it immediately becomes a matter of grave concern for the Commission itself.

In view of these developments there should certainly be no credence given to any statements of Walter E. Klauer, and particularly those made in his affidavit of August 9, 1937, attached to the petition for rehearing.

The petition for rehearing states (pp. 4–5) that the proposed Telegraph Herald Station will render a signal in the order of 0.5 millivolts per meter over a radius of approximately 35 miles, whereas Station WKBB, at its new location, will render a daytime signal in the order of 0.5 mv/m in a radius of approximately 32½ miles. The estimated coverage for WKBB was given by the WKBB engineer, whereas that stated in the petition with
538 reference to the proposed Telegraph Herald station was given by the latter's engineer. However, the WKBB engineer testified that in his estimates he used a higher conductivity value, and he believed that the proposed Telegraph Herald station would render a signal of 0.5 mv/m for a radius of 39 miles (R. 163–165). Furthermore, the engineering testimony showed that 0.25 mv/m would furnish fair service in the rural area and that such a signal would be rendered by the proposed Telegraph Herald station for a radius of 48 miles and include a population of 292,000. (R. 139–140; Telegraph Herald Exhibit #8.) This would include all of Dubuque, Jackson, and Delaware Counties in Iowa, Grant County in Wisconsin, Jo Daviess County in Illinois, and a large part of Clayton County in Iowa. There would also be included LaFayette County, Wisconsin, and a large part of Jones County in Iowa, but only the aforesaid six counties are generally considered in the Dubuque trade area (R. 8–9).

According to the 1930 census, the City of Dubuque has a population of 41,679, while the County has 61,214. Approximately 32% of the County population is rural. The other counties in the Dubuque trade area are predominantly rural. (R. 9–11.) This area produces approximately a $35,000,000 retail market and a $64,000,000 wholesale market, of which $12,000,000 is retail within the city of Dubuque and $20,000,000 wholesale. There are 231 active advertisers in the City of Dubuque, 65 of which expressed to the representative of the Telegraph Herald a desire to advertise over the proposed station. Of this number, 32 had never advertised over the radio and the remainder were not then advertising. (R. 22.) The witness for Station WKBB testified that 33 of the 65 had advertised over that station at

one time or another, and that 18 had advertised during 1936. Of the 18, three of them were then broadcasting, four had discontinued for the summer, and one was about to start. The other ten had definitely discontinued. Seven of the ten had taken spot announcements, and only three had sponsored programs (R. 286–288).

The petitioner strenuously objects to the finding of the Commission that the services proposed by the Telegraph Herald "is undoubtedly needed in the highly developed farming area described," and insists that the program plans of the Telegraph Herald show that the proposed service will duplicate that now available from Station WKBB. In view of the fact that the majority of the proposed service area is rural, it will suffice to compare the service rendered by WKBB in that regard with that proposed by the Telegraph Herald.

539

Agricultural Agent Huehn, of Delaware County, testified that he had broadcast over WKBB but that he had discontinued his program because "the broadcasts from WKBB were not heard by my farmers and there seemed to be a very poor tie-up regarding farm programs." (Depositions, p. 3.)

Agricultural Agent Walker, of Grant County, testified (Dep., pp. 57–59) that he was on a committee representing the County Agents in an effort to secure satisfactory broadcasting arrangements; that they "preferred some time between twelve and one o'clock, or, as a second preference, somewhere between six and eight o'clock in the evening"; that the only time that was ever offered to the agents was "between five and six o'clock in the evening," which is "a bad hour * * * for farm people"; and that "to the best of my knowledge we were never able to get the station interested in a noon hour."

Agricultural Agent Brunnemeyer, of Jo Daviess County, who had broadcast several times over Station WKBB, testified (Dep. 269–270) that—

"* * * when that schedule ran out it stopped right there. Why, I don't know; we never heard any more from them. We never failed to appear on that program. We were always on time; never once failed to meet our part of it."

In answer to a question as to WKBB being willing to cooperate, he replied (Dep. 270):

"When we worked with the first group that was in there they were very good, and it seemed like about half way through there was a change made, and, well, several times I know we had to wait for * * * we were pushed later on into the program. They had something else on and *we were told to wait until they could find a place in there for us.* Well, I think that some of our

boys felt like *other things were of a good deal more importance than the farm 15 minutes.*" [Italics supplied.]

540 He testified that he had this experience about five or six months previously. He further testified that he had broadcast once a month for a period of six or seven months but that he was "shifted around" and that there was no regularity of broadcast. (Dep. 272.)

This lack of cooperation on the part of WKBB with the county agricultural agents outside of Dubuque will apparently continue. Upon cross-examination by Commission counsel, Walter E. Klauer testified (R. 237):

"Q. What would be your plan so far as agricultural interests are concerned if you move; that is, will they be enlarged or be the same as you are now carrying?—A. *They will be similar to what we are carrying now.*" [Italics supplied.]

The tentative program schedule for one week offered in evidence by the Telegraph Herald (Exhibit #4) shows that a farm program is scheduled for each week-day noon between 12:30 and 1:00 o'clock, one day being assigned to each of the aforesaid six counties which will receive service from the proposed station. This was a result of actual contacts with the various agents, and several of them, including Agent Huehn (Dep. 8), Agent Walker (Dep. 57), Agent Combs (Clayton County, Dep. 2-6), and Agent Brunnemeyer (Dep. 271) stated specifically that some time between 12:00 and 1:00 or 12:30 and 1:00 would be most acceptable to the farmers.

It is also illuminating to consider the general type of programs broadcast by WKBB. There were introduced in evidence by the Telegraph Herald two exhibits (Nos. 11 and 12) showing the type of program broadcast by WKBB on September 2d and 6th, 1936. These were stated by the Telegraph Herald witness to be typical WKBB programs (R. 25-26), and no evidence to the contrary was offered. On September 2d, in the words of the Examiner, "18% of the time was utilized by local talent, 30% by transcriptions, and 52% by ABC (Affiliated Broadcasting Company) network. The local talent item was further broken down into figures, which show that 115 minutes were used by studio announcers, 15 minutes by local artists, and 40 minutes by a sponsored orchestra." On September 6th, according to the Examiner,

"78 minutes of the time of the station were used by local
541 talent, 192 minutes for transcriptions, and 570 for ABC network, or for local talent 9%, transcriptions 23%, and ABC network 68%."

The witness for Station WKBB testified that the ABC network programs were being carried at a cost of $325 per month. (R. 233.) This is significant in view of the fact that the sta-

tion was using so little local talent as compared with the amount of network programs. This might indicate one of two things: the station either was unable to secure the cooperation of local talent to any great degree, or it did not care to bother with the production of local-talent programs. The record would seem to indicate that both reasons contributed to the condition.

The Telegraph Herald's aforementioned proposed program schedule for one week lists a large number of local programs, and it was shown that definite arrangements had been made with the necessary talent to produce the programs. It also appeared that there is a large amount of other talent ready to broadcast over the Telegraph Herald station (Ex. 5, R. 33–36). This is in marked contrast with the showing that less than 20% of the time on WKBB is utilized by local talent. The reason for this condition may be found in the deposition of Msgr. Wolfe who has jurisdiction over Catholic schools for a radius of about 200 miles, including Columbia and Clark colleges in Dubuque. He stated that he had been offered the facilities of WKBB, "insofar as they were able to give us service," but that when he wanted a remote line to the colleges on a special occasion, offering to pay for the line, WKBB indicated that "they weren't looking so much for cultural programs as for the commercial type of broadcasting program." (Dep. 148.)

The Telegraph Herald has made definite arrangements for regular programs under the heading "Columbia College of the Air" and "Clark College of the Air." The University of Dubuque has also agreed to provide an educational series over the proposed Telegraph Herald station, for which arrangements have been made to install a remote line. The President of the University testified that he could not make use of the facilities of WKBB because it was impractical without a remote line, which the University could not afford, but that "the Telegraph
542 Herald has offered to provide that line for us, which is a great consideration, and makes their station really accessible to us, and they have offered to give us all the time we want after the line is installed, for musical and educational purposes." (Dep. 126, 127.)

The Dubuque Academy of Music has never broadcast over WKBB but will have a regular program over the Telegraph Herald station. (Dep. 175–176, 185.) The Immaculate Conception Academy has never been offered a period over WKBB, but plans to take advantage of the Telegraph Herald's offer of a regular period. (Dep. 162–163.)

The county school superintendents in the aforesaid six counties which will be served in whole or in part by the Telegraph

Herald station have each arranged to take one program every week, and a definite period, namely, three o'clock in the afternoon, has been set aside for these programs. The Grant County School Superintendent, Mr. Frank E. Ralph, stated that he had never been offered the facilities of WKBB and he did not know that they were available. (Dep. 72–73.)

Even the foregoing brief references to the record show that there is substantial evidence to support the Commission's finding that "the service proposed is undoubtedly needed in the highly developed farming area described." And they also show that petitioner's statement (p. 9, par. 10)—"A comparison of the program plans of the Telegraph Herald station with the actual record of station WKBB shows that the service proposed by the Telegraph Herald will duplicate the service now available from station WKBB and numerous other stations"—is indeed, to use petitioner's phraseology, "a gratuitous assumption, unsupported by any substantial evidence, and in fact contrary to the evidence of record." To illustrate, the following programs, for which arrangements have already been made by the Telegraph Herald and to some of which reference has already been made, are among many listed (R. 28–33) on the proposed program schedule which are departures from any broadcast by WKBB and, because of their strictly local nature, could not possibly be expected from any distant station: farm programs from six counties in rotation, one each week-day, and at a regular period most acceptable to the farmers; a similar arrangement for county school
543 programs each week-day; a daily local market review, which is not now available from any source (R. 116, 123); corn husking contests, fairs, draft-horse shows, and other matters of interest to the farmers, to be broadcast by the aid of short-wave equipment (the cost of which is included in the Telegraph Herald construction estimate) when telephone lines are not available and the Commission grants the requisite authority (R. 121); Columbia College of the Air; Clark College of the Air; regular programs from the Immaculate Conception Academy; University of Dubuque educational series; regular programs under the auspices of the Schroeder Conservatory of Music (Dep. 188–189); regular programs under the auspices of the Dubuque Academy of Music (Dep. 175–176, 185); and three regular weather forecasts each day by remote line direct from the Dubuque Weather Bureau office in order to facilitate announcements, guarantee their accuracy and authenticity, and provide for immediate emergency weather broadcasts (R. 28, Dep. 228–231), all of which was stated by the U. S. meteorologist to provide a desirable improvement over the usual method of broadcasting weather forecasts (Dep. 235).

The petition for rehearing also seeks to show that adequate radio service is now available in the Dubuque area. However, the field intensity measurements taken by the Telegraph Herald radio engineers indicate (Exhibit #10; R. 142–143, also 139–140) that WKBB is the only station rendering satisfactory service to the business section of Dubuque, and that WKBB and WMT (Cedar Rapids) are alone in serving the metropolitan area; that WGN, WBBM, and WENR (all Chicago), WHO (Des Moines), and WSUI (Iowa City) are satisfactorily heard in certain parts of the rural area 20 miles from Dubuque; and that stations WOI (Ames) and WTMJ (Milwaukee) are satisfactorily heard in certain parts of the rural area 40 miles from Dubuque, but that WMT and WMAQ are the only stations which provide a signal of 0.5 mv/m or greater within the entire area which the Telegraph Herald station will serve. However, these are chain stations which obviously carry programs not particularly designed to interest, or meet the requirements of, persons in the proposed Telegraph Herald service area.

544 B. As to matters alleged to have been overlooked or not considered

Under this heading the petitioner presumably purports to set forth matters which, if they had been considered by the Commission, would have resulted in a different decision.

The first fact noted is that the Telegraph Herald "publishes the only daily newspaper in Dubuque, aside from the noncompetitive Catholic Daily Tribune which is published in Dubuque for national circulation." The facts are that the Telegraph Herald, which was established in 1836 (R. 7), is a daily newspaper with a circulation of over 31,000, more than 50% of which is outside of Dubuque County (R. 9). There is also published in Dubuque the said Catholic Daily Tribune which is a national newspaper with a circulation of 18,000 or 20,000, the bulk of which is in the local area. (R. 103.) The Telegraph Herald circulates in a radius of approximately 50 miles extending into the six counties already mentioned. (R. 8.) This area is served, and the Examiner so found, by 29 weekly and 13 daily newspapers. (R. 12.)

In the City of Dubuque, three daily newspapers circulate in competition with the Telegraph Herald, namely the aforementioned Catholic Daily Tribune, the Des Moines Register-Tribune, and the Cedar Rapids Gazette. There are also published in Dubuque, in advertising competition with the Telegraph Herald, the weekly Dubuque Leader, the Buyers' Guide, and the Witness; and then there is the Direct-by-Mail Service. (R. 12.)

Station WKBB is the only radio advertising medium in this area.

The petition dwells at length upon the publication by the Telegraph Herald of liquor advertisements, it being contended that such publication is in violation of the laws of the State of Iowa. It is hardly necessary to point out that the question as to whether or not the Telegraph Herald is violating any Iowa statute is one for the State to raise in a proper proceeding for that purpose. Furthermore, the record shows that there is no intention on the part of the Telegraph Herald to carry liquor advertising over the proposed station. (R. 120.) However, in view of the great importance attached by petitioner to the fact that the Telegraph Herald carries liquor advertising, and of the affidavit of August 9, 1937, by Walter E. Klauer in that connection in support of the petition, the true facts are here set forth.

545

The Iowa statute (Code 1921–F47) in question provides that—

"*Except as permitted by federal statute and regulations*, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state." [Italics supplied.]

Everyone know that the federal laws permit the public advertisement of alcoholic liquors. However, at the time of the hearing, the Liquor Control Commission of Iowa had not decided what interpretation to place upon this provision. Because of this doubt the Telegraph Herald determined to accept no more liquor accounts after the expiration of existing contracts, or until an authoritative interpretation of the statute declared such advertising perfectly legal. William J. Arndt, the witness for the Telegraph Herald, testified (R. 119) that this had been done upon his recommendation and that—

"* * *, inasmuch as there was some question as to the propriety of this type of advertising from the Liquor Control Commission, we discontinued this type of advertising in view of those existing circumstances."

As stated by Mr. Arndt in his affidavit of August 25, 1937, which is attached to and asked to be read as a part of this petition as Exhibit A, the Telegraph Herald has been advised that the statute does not forbid liquor advertising in the State of Iowa as long as all advertising complies with the federal laws and regulations. In view of these changed circumstances, the Telegraph Herald, in company with eight other Iowa daily newspapers, decided to accept liquor advertising. However, the affidavit of Mr. Arndt reaffirms his unequivocal statement made at the time of

the hearing that no liquor advertising will be carried over the Telegraph Herald radio station.

The petitioner also stated (p. 13) that the Telegraph Herald "was requested to publish the radio (WKBB) programs" but that it has consistently refused to do so. The record shows that, in answer to the question as to why the Telegraph Herald does not publish the WKBB programs, Mr. Arndt replied (R. 13), 546 "We have never been approached on that matter." Later the Examiner himself questioned the Telegraph Herald witness regarding the publication of WKBB programs and received the following answer (R. 315):

"We were never approached on the matter of publishing the local station's listing."

Walter E. Klauer, President of Station WKBB, stated (R. 220), upon direct examination, that he had never requested the Telegraph Herald to list his programs.

The "request" to which petitioner refers evidently concerned a publicity release covering a transcribed Chevrolet program which was sent to Station WKBB by the World Broadcasting Company to be forwarded to the Telegraph Herald. The Dubuque Chevrolet dealer wrote WKBB asking why the release never appeared in the newspaper. He sent a copy of his letter to Mr. Woodward, president of the Telegraph Herald. Mr. Carpenter, Manager of WKBB, replied stating that he did not know, and sent a copy of his reply to Mr. Woodward (R. 292-293). Mr. Carpenter admitted (R. 308) that it did not call for an answer from Mr. Woodward. Later Mr. Arndt, for the Telegraph Herald, testified as follows (R. 315):

"* * * I can't regard a copy of a letter sent to our publisher, intended for one of our advertisers, as sufficient grounds for us to make an arrangement of that kind that involves considerable space in the paper. The only thing a daily newspaper has to sell is white space."

The publicity release was, of course, in the realm of advertising for Chevrolet, and no newspaper could reasonably be expected to publish it without payment therefor at the applicable advertising rates.

C. Conclusion

The foregoing considerations prove that the Petition for Rehearing fails to show, as required by Commission rule 106.31, that new or additional material evidence has been discovered, or that the Commission overlooked or failed to consider any material

question of law or matter of fact which, if considered, would have changed its decision.

547 THEREFORE, the Petition for Rehearing should be denied.

Respectfully submitted.

TELEGRAPH HERALD (KDTH),
By (Sgd.) ELIOT C. LOVETT,
Its Attorney.
729 Fifteenth Street, Washington, D. C.

CITY OF WASHINGTON,
District of Columbia, ss:

I, Eliot C. Lovett, upon my oath state that I signed the foregoing Opposition to Petition of Station WKBB for Rehearing as the attorney for the Telegraph Herald; that I personally examined the renewal applications of the petitioner and the documents filed in support of the application for the transfer of control and know that the references in the foregoing Opposition accurately reflect the corresponding facts in the said applications and documents on file with the Commission; that I know that all other matters and things contained in the said Opposition are true of my own knowledge except those stated upon information and belief and those I verily believe to be true; and that I have personally served a copy of the said Opposition upon the representatives of each of the parties who participated in the proceedings.

(Sgd.) ELIOT C. LOVETT.

Subscribed and sworn to before me a notary public in and for the District of Columbia this 27th day of August 1937.

[SEAL] (Sgd.) JERROLD B. ULLMAN,
Notary Public, D. C.

548 *Exhibit A*

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re application of Telegraph Herald (KDTH), Dubuque, Iowa. For construction permit.

Affidavit of William J. Arndt in Support of Opposition to Petition For Rehearing

STATE OF IOWA,
County of Dubuque, ss:

I, William J. Arndt, upon my oath state that I have read the Petition for Rehearing filed in the above entitled cause by

Sanders Brothers Radio Station, licensee of Station WKBB, together with the affidavits of Walter E. Klauer dated August 9th, 1937, and attached to the said Petition, particularly the affidavit relating to the advertisements of alcoholic liquor appearing in the Telegraph Herald; that I am the same William J. Arndt to whom reference is made in the Petition and who testified that the Telegraph Herald would not renew any then (September 15, 1936) existing contracts for liquor advertisements; that this statement was based upon the fact that the policy to be established by the Liquor Control Commission of Iowa was then undetermined, although there was no indication that regulations would be promulgated prohibiting liquor advertisements in newspapers; that subsequent to March 5, 1937, the Telegraph Herald was advised that the only provision of the statute which could possibly prohibit liquor advertising does not actually forbid such advertisin in the State of Iowa so long as it complies with the federal laws and regulations; that, in the light of this change in conditions, the Telegraph Herald decided to continue to accept alcoholic beverage accounts; that eight other daily newspapers in the State of Iowa also carry such advertisements, namely, Burlington Hawk-Eye Gazette, Burlington, Iowa; Davenport Times, Davenport, Iowa; Davenport Democrat, Davenport, Iowa; Dubuque Telegraph Herald, Dubuque, Iowa; Fort
549 Madison Democrat, Fort Madison, Iowa; Keokuk Gate City, Keokuk, Iowa; Sioux City Tribune, Sioux City, Iowa; Sioux City Journal, Sioux City, Iowa; Spencer Reporter, Spencer, Iowa; and that as the record already shows, the Telegraph Herald will carry no liquor advertisements whatsoever over its proposed radio station because it believes that, whereas such advertisements are entirely proper in a newspaper, yet they are objectionable for broadcasting purposes, especially in the case of a daytime station which will number many children among its listeners.

If and when the Iowa Liquor Control Commission definitely rules against the acceptance of liquor advertising in daily newspapers of the state, the Telegraph Herald will be one of the first to abide by such regulations.

(Sgd.) WILLIAM J. ARNDT.

Subscribed and sworn to before me a notary public in and for the State and County aforesaid this 25 day of August 1937.

[SEAL] (Sgd.) M. R. KANE,
Notary Public.

My Commission expires July 4, 1939.

[Endorsed:] Received: Federal Communications Commission. Mail and Files Section. 1937, Sep. 4, A. M. 7:33.
[Endorsed:] Federal Communications Commission. Sep. 3, 1937. Office of Secretary.
[Endorsed:] Received. Sep. 4, 1937. Docket Section.

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re application of Telegraph Herald (KDTH), Dubuque, Iowa. -For construction permit.

550 *Supplemental affidavit in support of opposition to petition of station WKBB for rehearing.*

STATE OF IOWA,
County of Dubuque, ss:

I, William J. Arndt, upon my oath state that I am the same William J. Arndt who, on August 25, 1937, executed an affidavit in support of the opposition filed on behalf of the Telegraph Herald to the petition of Station WKBB for a rehearing in connection with the above-entitled application: that, since I executed the said affidavit, there have come to my attention matters which may be of interest to the Federal Communications Commission in view of the statements heretofore made by Walter E. Klauer, President of Sanders Brothers Radio Station, licensee of Station WKBB, concerning the policy of the Telegraph Herald in accepting liquor advertisements for publication in its newspaper; that the said Walter E. Klauer directs the policies of Station WKBB; that Station WKBB maintains studios in the Julien Hotel, which is operated by the Julien Hotel Company, Inc., on the corner of Second and Main Streets, in Dubuque; that the said Walter E. Klauer is manager of the Julien Hotel, of which he and his father are the principal owners; that, on August 26th, the Bureau of Internal Revenue announced the names of the Iowa dealers who have purchased the $25 Federal retail liquor dealer's tax stamps for the fiscal year which began July 1st, and which entitle the purchasers to sell both beer and hard liquor as far as the Federal Government is concerned; that the said Julien Hotel Company, Inc., is listed among those holding a Federal permit; that on August 27th, 1937, Hon. Bernard E. Manley, Chairman of the Iowa Liquor Control Commission, announced that the number of Federal retail liquor dealer permits in Iowa is a "yardstick" by which the State authorities are able to estimate the volume of illicit-liquor traffic, and that "if there are one thousand of those

stamps in the State, that means there are that many bootleggers—or very nearly that many"; that dealers holding the stamps are immune from federal prosecution even though they violate State laws; that Hon. John H. Mitchell, Attorney General of Iowa, announced on August 27th that he would use the list
551 of permit holders as a basis for concerted local and State action to enforce the liquor laws and would "suggest action by county attorneys and sheriffs," and that "the names likewise will be used by our own Department."

(Sgd.) WILLIAM J. ARNDT.

Subscribed and sworn to by me, a notary public in and for the State and County of aforesaid this 1st day of September 1937.

[SEAL] (Sgd.) M. R. KANE,
Notary Public.

My Commission expires July 4, 1939.

Federal Communications Commission, Washington, D. C.

Docket No. 3967

In re application of Telegraph Herald (KDTH), Dubuque, Iowa. For construction permit.

Affidavit of Service

CITY OF WASHINGTON,
District of Columbia, ss:

I, Dorothy B. Slebos, upon my oath state that I am employed in the office of Eliot C. Lovett, attorney for the Telegraph Herald; and that I have personally served, upon the representatives of each of the parties who participated in the proceedings, a copy of the foregoing supplemental affidavit of William J. Arndt in opposition to the Petition of Station WKBB for Rehearing.

(Sgd.) DOROTHY B. SLEBOS.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 3rd day of September 1937.

[SEAL] (Sgd.) T. C. MEIDINGER,
Notary Public.

My commission expires June 1, 1938.

552 [Endorsed:] Federal Communications Commission. Sep. 9, 1937. Office of Secretary.
[Endorsed:] Received. Sep. 10, 1937. Docket Section.

Federal Communications Commission (en banc), Washington, D. C.

Docket No. 3967

In re application of Telegraph Herald, Dubuque, Iowa. For construction permit to operate on 1340 kc. daytime with 500 w. power.

Reply to opposition to petition for rehearing

Sanders Brothers Radio Station, licensee of Radio Station WKBB (hereinafter referred to as "Petitioner") filed a Petition for Rehearing of the above-entitled matter on August 10, 1937. The Telegraph Herald (hereinafter referred to as "Applicant") filed an Opposition thereto on August 27, 1937. Said Opposition is replete with unwarranted inferences, and statements without foundation in the record and without foundation in fact. A number of such statements are so grossly at variance with the record or based upon such erroneous assumptions as to require a reply.

1. Alleged discrepancy between record and WKBB renewal applications

Approximately six pages of Applicant's Opposition are devoted to a labored comparison of the information regarding estimated income and expenditures contained in the renewal applications of Station WKBB with the evidence of record regarding the operating deficits of the station. In substance, Applicant alleges that the information contained in the renewal applications shows that the station has operated at a substantial profit and that therefore the evidence of record that the station has operated at a loss is in error. The apparent purpose of these allegations is to discredit the testimony of Walter E Klauer, Petitioner's president, and to infer that there is
553 adequate commercial support available in Dubuque to warrant the establishment of another radio station. Obviously, if it be a fact as the record shows, that WKBB, although efficiently managed and operated, is unable to make a profit, it follows that the addition of another radio station would not only be ruinous to WKBB but the new station could not hope to meet operating expenses, and accordingly the broadcasting service to the public would be seriously impaired. This is conceded by Applicant, at least through inference, inasmuch as it has so strenuously emphasized its allegations that WKBB is operating at a substantial profit.

What are the facts? By a novel method of reasoning, Applicant alleges that the station made a profit of $15,000 in 1934, $9,300 in 1935, and $7,200 in 1936. These figures have been determined by deducting from the estimated "average gross income per month from station operation," the total of the estimated "average amount of money per month spent for talent and other purposes," as shown in the renewal applications. In other words, Applicant has assumed that an estimate of the money spent for talent and other purposes, as called for by the renewal applications is equivalent to the total of all items deductible from gross income to determine net profit or loss. The fallacy of such an assumption is obvious. In the first place, the renewal application calls only for the amount of money spent. Such matters as reserves, depreciation, and sales allowances are not called for, nor are they included in the WKBB renewal applications. Secondly, the amounts shown in the renewal applications are estimates only, since the books of WKBB are closed only at the end of each calendar year and the renewal applications are prepared in April and October of each year.

In order properly to compare the estimates shown in the renewal applications with the actual operating figures it is necessary to convert the renewal estimates into a calendar year basis. This has been done in the following table by using the estimates contained in the April 1934 renewal for the months of January, February, and March 1934; the estimates contained in the October 1934 renewal for the months of April, May, June, July, August, and September 1934; the estimates contained in the April 1935 renewal for the months of October, November, and December 1934, and January, February, and March 1935; etc.

	1934		1935		1936	
	Ave. gross income	Ave. amt. spent	Ave. gross income	Ave. amt. spent	Ave. gross income	Ave. amt. spent
Jan	$3,000	$2,000	$2,500	$1,500	$2,500	$1,800
Feb	3,000	2,000	2,500	1,500	2,500	1,800
Mar	3,000	2,000	2,500	1,500	2,500	1,800
Apr	3,500	2,000	2,500	1,800	2,800	2,100
May	3,500	2,000	2,500	1,800	2,800	2,100
June	3,500	2,000	2,500	1,800	2,800	2,100
July	3,500	2,000	2,500	1,800	2,800	2,100
Aug	3,500	2,000	2,500	1,800	2,800	2,100
Sept	3,500	2,000	2,500	1,800	2,800	2,100
Oct	2,500	1,500	2,500	1,800	2,900	2,600
Nov	2,500	1,500	2,500	1,800	2,900	2,600
Dec	2,500	1,500	2,500	1,800	2,900	2,600
Total for Years	$37,500	$22,500	$30,000	$20,700	$33,000	$25,800

There is attached hereto and made a part hereof, marked Exhibits 1, 2, and 3, profit and loss statements of Station WKBB for the calendar years 1934, 1935, and 1936 respectively.

Calendar year 1935

A comparison of the estimates contained in the renewal applications covering the calendar year 1935 with the profit and loss statement for the year 1935 (Exhibit No. 2) discloses that remarkably accurate estimates were made in the renewal applications. Taking gross income first, the estimates contained in the renewals total $30,000 for the year (see tabulation above). The profit and loss statement shows that the actual gross income amounted to $29,040.77. The renewals estimated money spent during the year at $20,700. The profit and loss statement shows that actual disbursements (Music and Records, News Service, Telephone, Royalties (ASCAP), Salaries, Fuel, Light and Power, Maintenance and Repairs, Frequency Expense, Traveling Expense, Commissions, Advertising and Promotion, Office Supplies, Insurance, Miscellaneous Expense, Legal Expense and Taxes) amounted to $20,865.60. These estimates are within 3% and less than 1%, respectively, of being absolutely accurate. It does not follow, however, as assumed by Applicant, that the difference between the gross income and the actual disbursements represents net profit to the station. Besides the disbursements, there must be deducted from the gross income: sales allowances of $1,569.42, reserves of $3,235.25 and depreciations of $5,688.44. This leaves a net loss for the year 1935 of $2,317.94, as stated in the affidavit of Walter E. Klauer dated August 9, 1937, and attached to Petitioner's petition for rehearing.

Calendar year 1936

A similar comparison of the 1936 figures shows the following:

	Gross income	Actual disbursements
Estimates shown in renewals	$33,000.00	$25,800.00
Profit and loss statement	35,993.21	31,082.24

Here the estimates fell somewhat short of actual results, both in income and disbursements. However, an examination of the month by month estimates as shown in the above tabulation (page 3, supra) readily discloses the reasons for the estimates being lower than the actual results. The year 1936 was a period in which both income and expenditures were steadily increasing. Under such conditions the estimates naturally would be low. Furthermore, there were several extraordinary expenses during the year 1936 which were not included in the estimates shown in the renewal applications; e. g., legal and engineering expenses.

On the basis of Applicant's erroneous assumption, the above quoted figures would indicate that the station made a profit of $7,200 (Renewal estimates, gross income less disbursements) of $4,820.97 (Profit) and loss statement, gross income less disbursements). Actually, the station incurred a loss of $1,194.41 for the year 1936 by reason of the fact that other legitimate deductions were made besides actual cash disbursements, namely: sales allowances, $1,053.15; depreciation, $5,723.24; and reserves, $2,601.49. These deductions would have shown a deficit of $4,556.91 had they not been partially offset by a charge-off of accounts payable in the amount of $3,362.50 (Exh. No. 3).

Calendar year 1934

It is true, as contended by Applicant, that the estimates contained in the renewal applications covering the year 1934 are at variance with the actual operating figures. The renewal estimates show a total gross income of $37,500 whereas the actual gross income was only $20,938.06. The renewal estimates show
total disbursements of $22,500 whereas the actual disburse-
556 ments amounted to only $15,533.08. These discrepancies are due to several factors. The station had just commenced operation in December of 1933; it was feeling its way with regard to rates and had to reduce its rate schedule before the end of 1934; the estimates contained in the renewal applications were based on monthly billings, many of which were either reduced to conform to the lower rate schedule or were never collected; radio advertising was entirely new to the community and the amount of business varied greatly from month to month; bad debts were excessive; the station's bookkeeping system was not perfected until the end of 1934—at that time a substantial amount was written off in bad debts simply by not including it in gross income. Exhibit No. 1 hereto attached is a correct profit and loss statement for the year 1934 which was prepared at the close of the year when the bookkeeping system was finally and completely set up. It shows a net deficit for the year of $1,847.91.

On page 4 of Applicant's Opposition reference is made to a profit and loss statement covering the months of October, November, and December 1934, which was submitted in connection with a previous application, and showing an average profit for those three months, after deducting depreciation, of $42.11 per month. It is inferred that this conflicts with the profit and loss statement for the year 1934 showing a deficit for the year of $1,847.91. Such a contention scarcely warrants a reply. It is common knowledge that radio advertising is at its peak during the months of

October, November, and December, and if a station is only able to show a profit of $42.11 per month during those months it is an absolute certainty that the year's operation will result in a substantial loss.

On page 5 of the Opposition, Applicant arrives at some startling conclusions by reason of its erroneous assumptions relative to the information contained in the renewal applications, as above discussed; namely, that Petitioner has deducted as depreciation $16,847.91 in 1934, $11,617.94 in 1935, and $8,394.41 in 1936. Actually, as shown by the profit and loss statements hereto attached, the deductions for depreciation were $6,188.44 for 1934, $5,688.44 for 1935, and $5,723.24 for 1936, all of which deductions were entirely warranted by the value of the fixed assets.

557 From the foregoing facts it is evident that Applicant's contention that Station WKBB has operated at a profit is without merit. Actually, in the three years from 1934 to 1936, inclusive, the station has incurred an aggregate deficit of $5,360.26. Thus, it cannot be urged seriously that the Dubuque market can financially support two radio stations.

2. Alleged misstatements regarding chamber of commerce committee assignments

This matter is admitted by Applicant to be of minor importance. However, Applicant's interpretation of the stipulation on the subject, filed herein on March 2, 1937, is not in accord with Petitioner's interpretation thereof. An examination of the record in this cause shows conclusively that the Telegraph Herald has taken an extremely hostile attitude toward Station WKBB ever since the Station commenced operation in the Dubuque area. The Chamber of Commerce "committee appointments" is only one of a series of incidents indicative of this hostility. Mr. Klauer testified that immediately after he became associated with Station WKBB he was dropped from the committee on which he had been serving, and that this occurred at a time when Mr. Woodward, publisher of the Telegraph Herald, was President of the Chamber of Commerce. Paragraph 5 of the stipulation confirms Mr. Klauer's testimony that he had been dropped from his committee assignments, and show that Mr. Woodward's term as President expired concurrently with Mr. Klauer's committee assignment for 1933.

However, Paragraph 7 of the stipulation setting forth the general practice followed in making appointments indicates that Mr. Woodward was in a position to exercise influence in the matter of committee appointments at the time of the incident, and Paragraph 5 shows that Mr. McLean, successor to Mr. Woodward as President, disclaims responsibility for the incident.

It may be that Mr. Woodward had nothing whatever to do with the removal of Mr. Klauer from the committee, but under all the circumstances disclosed in this record Mr. Klauer was amply justified in so believing.

3. Alleged need for proposed program service

Applicant, in its Opposition, argues at great length that its proposed program service will not duplicate that being
558 rendered by Station WKBB and that there is a need therefore in the surrounding agricultural areas. Principal reliance is placed upon the proposed county agricultural agent program, to be given by the agents of the six surrounding counties, in rotation, one each day, at a suitable hour to the farmers. The evidence shows that Station WKBB attempted an identical program, but found as a practical matter that it could not be worked. The county agents live so far away from Dubuque that often they were late or failed to appear at all. Some of the agents lost interest because the programs were not reaching their entire counties. The Telegraph Herald undoubtedly would encounter the same difficulties. In order to satisfactorily serve the entire six counties in question, it would be necessary to cover a radius of 60 miles. Applicant admits that it will only cover a radius of 48 miles with a signal of 250 microvolts per meter, which, of course, is inadequate for even satisfactory rural service. Its 500 microvolt per meter contour will extend only 39 miles.

The record shows that in lieu of the six county agents, the Dubuque County Agent, who resides in Dubuque, is broadcasting over Station WKBB each Monday noon. On the remaining days of the week the time is used by other agricultural speakers or by material supplied by the Agricultural Departments of Iowa, Illinois, Wisconsin, and the Federal Government.

During the six months prior to the hearing Station WKBB broadcast 142 quarter-hour agricultural programs, 834 quarter-hour educational programs, 325 quarter-hour civic programs, 198 quarter-hour religious programs, 425 quarter-hour children's programs, and 982 news broadcast (WKBB Exh. No. 22), and approximately 70 musicians and musical organizations have broadcast over the station (WKBB Exh. No. 25). A comparison of the WKBB programs with those proposed by the Telegraph Herald shows conclusively that they are practically identical.

In an effort to show that its proposed programs will not duplicate those of WKBB, applicant directs attention to its plans to carry programs from the Columbia College, the Clark College, the University of Dubuque, the Dubuque Academy of Music,

and the Immaculate Conception Academy. During the
559 past school term all of these schools have used the facilities of WKBB extensively. Columbia College has broadcast a daily half-hour program five days a week, by remote control, from the college, and also its commencement exercises on May 30, 1937. Clark College has broadcast two half-hour programs weekly. The University of Dubuque has broadcast a daily quarter-hour program five days a week, by remote control, and also its commencement exercises on June 8, 1937. Graduating students and teachers of the Dubuque Academy of Music have appeared over the station on numerous occasions. Likewise, graduates and students of the Immaculate Conception Academy have broadcast over the station.

4. Alleged lack of service available in area proposed to be served

On the subject of existing service available in the area proposed to be served Applicant contradicts itself. On the one hand, when speaking of its own expected service area, it is contended that 250 microvolts per meter is sufficient for satisfactory service, but when determining what stations serve the area proposed to be served with a satisfactory signal 500 microvolts is used. And by failing to show the extent of coverage of those stations which serve only a part of the area in question Applicant leaves the impression that there is very little radio service available. Actually, there is an overabundance of radio service, according to Applicant's own evidence. Applicant took field strength measurements of all stations delivering a signal of 100 microvolts per meter or more at points 40 miles west of Dubuque, 20 miles west, western city limits, center of city, eastern city limits, 20 miles east, and 40 miles east (Tel. Herald Exh. No. 10). These measurements show that the entire area proposed to be served by the Telegraph Herald receives a signal of 250 microvolts per meter or more from Station WMT, WSUI, WMAQ, WGN, and WBBM.

WMT delivers a signal ranging from 2.85 mv/m to 7.7 mv/m to the west and from 2.65 mv/m to 1.22 mv/m to the east.

WSUI delivers a signal ranging from .798 mv/m to 1.24 mv/m to the west and from .588 mv/m to .387 mv/m to the east. Thus, about 3/4 of the area in question receives better than .500 mv/m.

560 WMAQ delivers a signal ranging from 1.09 mv/m to .540 mv/m to the west and from 1.095 mv/m to 3.625 mv/m to the east.

WGN delivers a signal ranging from 1.010 mv/m to .410 mv/m to the west and from 1.021 mv/m to 2.65 mv/m to the east. Thus, over 3/4 of the total area in question receives better than .500 mv/m.

WBBM delivers a signal ranging from .640 mv/m to .318 mv/m to the west and from .805 mv/m to 1.88 mv/m to the east. Thus, over half of the area in question receives better than .500 mv/m.

In addition, Station WHO serves the western half of the area in question with about .500 mv/m and the eastern half with about .250 mv/m or slightly less; Station WOI serves about 1/2 of the area to the west with approximately .500 mv/m; Station WENR serves the eastern half of the area in question with .500 mv/m or more; Station WTMJ serves the eastern half of the area with a signal ranging from .398 mv/m to .650 mv/m; Station WIND serves about 1/2 of the area to the east with about .400 mv/m; Station WJJD serves about 1/2 of the area to the east with about .400 mv/m; and Station WIBA serves about 1/2 of the area to the east with approximately .400 mv/m.

In addition to the foregoing 12 stations, Station WKBB also serves the area.

5. Alleged newspaper competition

In an effort to leave the impression, which is entirely erroneous, that the newspaper field in Dubuque is highly competitive, Applicant makes such statements as: "There is also published in Dubuque the said Catholic Daily Tribune, which is a national newspaper with a circulation of 18,000 or 20,000, *the bulk of which is in the local area*" [italics supplied] and "In the City of Dubuque three daily newspapers circulate in competition with the Telegraph-Herald; namely, the aforementioned Catholic Daily Tribune, the Des Moines Register-Tribune, and the Cedar Rapids Gazette. There are also published in Dubuque, in advertising competition with the Telegraph Herald, the weekly Dubuque Leader, the Buyers' Guide, and The Witness; * * *." It will be noted that Applicant does not allege that the first three newspapers are in advertising competition with it.

561 Actually, the Telegraph Herald dominates the newspaper field in Dubuque. For all practical purposes, it is the only newspaper. The Catholic Daily Tribune is, as its name indicates, a daily newspaper published for members of the Catholic Church. Petitioner has been advised by the publishers of the Catholic Tribune that its average net paid circulation is 14,666 which covers the entire United States. The circulation in the City of Dubuque is 1,114 or only 7.5% of the total; in Dubuque County, including Dubuque City, 1,343, or only 9% of the total and in the six counties, including Dubuque, only 1,780 or only 12% of the total. This is an entirely different situation than that pictured by Applicant, as above quoted. Likewise, the competition from the Des Moines Register-Tribune and the Cedar Rapids

Gazette is not nearly as keen as Applicant would have the Commission believe. The latest Audit Bureau circulation reports show that the Cedar Rapids Gazette has no circulation whatever in Dubuque or Dubuque County. Its total circulation in the six counties surrounding Dubuque amounts to only 2,021. The Des Moines Register-Tribune has a daily circulation of only 614 in Dubuque City, 743 in Dubuque County and 3,067 in the surrounding six counties. The Sunday circulation is somewhat higher.

What does the advertising competition amount to? Three small weekly papers, one of them a Catholic newspaper, one a labor paper, and the third a free shopping guide. Two of them are published on Thursdays and the third one on Fridays.

6. Liquor advertising

Applicant admits that it has continued to accept liquor advertisements, notwithstanding the testimony of its circulation manager given at the hearing to the effect that their existing contracts would not be renewed, and gives as an explanation, therefor, that "*subsequent to* March 5, 1937, the Telegraph Herald *was advised*" that the Iowa Liquor Control Act "does not actually forbid such advertising." [Italics supplied.]

It will be noted that Applicant does not allege that the State authorities have ruled that advertising of liquor is permitted, but merely that it has been so advised, presumably by its own
562 counsel; nor is the exact date shown on which the "advise" was received. The Iowa Liquor Control Act provides:

"Sec. 40. No advertising.—Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Iowa.

"(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the commission and then only in strict accordance with such regulations."

Petitioner has made diligent inquiry to determine what official interpretations have been placed upon the above-quoted statute. So far as Petitioner has been able to learn, the only official ruling ever made on the subject was in the form of a letter from the office of the Attorney General for the State of Iowa to the County Attorney for Dubuque County, dated August 29, 1935. Copy of said letter is hereto attached, marked Exhibit No. 4. No regulations, as provided for in Section (1) above-quoted and referred to in the Attorney General's letter, have been promulgated by the

Liquor Commission, and it is obvious from a reading of the statute that unless and until the Commission shall issue regulations governing advertising of liquor, such advertising shall be illegal. Furthermore, Petitioner has been advised directly by the Iowa Liquor Commission that advertising of liquor in the State of Iowa is illegal.

Applicant's contention that the phrase "except as permitted by federal statute and regulation" permits advertising (since it is not forbidden by federal statute) is certainly in error. If this were correct there would have been no purpose whatever in including the above-quoted section in the Act. Furthermore, it is elementary that the Federal Government has no jurisdiction to regulate advertising within a state.

Applicant states "that the question as to whether or not the Telegraph Herald is violating any Iowa statute is one for the State to raise in a proper proceeding for that purpose."
563 This is true. However, the question is also of vital importance to the Commission in determining the qualification of an Applicant for a radio franchise.

7. Failure of Telegraph Herald to publish WKBB programs

Applicant would have the Commission believe that Petitioner has made no attempt whatever to have its programs published in the Telegraph-Herald. However, the record shows that several such attempts have been made.

For some time after the station commenced operation, the programs were supplied regularly to the Telegraph Herald. At the time the station became affiliated with a network (April 1936), complete listings of the network programs were sent to the newspaper for five weeks. None of these were ever published (R. 290–292).

In the year 1935, the station carried a series of programs designated as a good will gesture to the newspaper. These programs were likewise sent to the newspaper but were not published (R. 294).

8. Supplemental affidavit of William J. Arndt

The supplemental affidavit of William J. Arndt, dated September 1, 1937, is irrelevant and immaterial to the issues. It does not alleged a violation of the Iowa State Liquor Control Act nor does it set forth facts which, even if true, would constitute a violation. Furthermore, it relates to the Julien Hotel Company, Inc., an Iowa corporation, which is not involved in this proceeding in any manner whatsoever, nor is it connected in any way with Sanders Brothers Radio Station, licensee of Station WKBB.

The allegation in the affidavit that Walter E. Klauer, President of WKBB, is manager of the Julien Hotel and one of the principal owners thereof is entirely incorrect. He is not and never has been the manager of the hotel, nor has he ever been one of the principal owners thereof. He is vice-president of the corporation and holds one qualifying share only. Likewise the inference that the Julien Hotel is violating the Iowa Liquor Act is utterly false. The hotel holds a local permit which entitles it to sell beer as permitted by state law. This necessitates the purchase of a federal retail malt beverage dealer's tax stamp which costs $20.00.

A federal tax stamp covering both liquor and malt
564 beverages costs only $25.00 and the $25.00 stamp is purchased simply as a protection against federal prosecution in the event of a possible sale of liquor by employees of the hotel. In other words, the $5.00 difference between the cost of the two tax stamps is in the nature of an insurance premium.

Said affidavit is an obvious attempt to reflect upon the character of Walter E. Klauer, President of WKBB, and is entirely without foundation in fact. It is typical of the attitude displayed by the Telegraph Herald toward the said Klauer since he became associated with WKBB, as shown by the record and found by the examiner.

Conclusion

Applicant's opposition to Petitioner's request for rehearing of the above-entitled cause has injected numerous minor issues which tend to cloud and confuse the principal issues; namely, that there is no need in the Dubuque area for an additional radio station and that there is insufficient commercial support to insure the satisfactory operation of two stations. Petitioner has incurred substantial deficits in the operation of Station WKBB to date, but hopes, by improving its technical efficiency, as authorized by its recently granted construction permit (involving an expenditure of $15,000) to increase its business sufficiently to make the station self-supporting. Obviously, a division of the radio advertising revenues available in Dubuque will result in the destruction of WKBB.

Wherefore, Petitioner prays that its petition for rehearing be granted.

SANDERS BROTHERS RADIO STATION
(WKBB),

By (Sgd) LOUIS G. CALDWELL,
By (Sgd) REED T. ROLLO,
By (Sgd) DONALD C. BEELAR,
Its Attorneys.

365 Verification

STATE OF IOWA,
County of Dubuque, ss:

Walter E. Klauer, being first duly sworn on oath, deposes and says that he is the President of Sanders Brothers Radio Station, that he has read the foregoing Reply to Opposition to Petition for Rehearing and that the facts stated therein are true and correct of his own knowledge except to such matters as are stated upon information and belief, and as to these matters he believes them to be true.

WALTER E. KLAUER.

Subscribed and sworn to before me on this — day of September 1937.

——— ———, *Notary Public.*

My Commission Expires.

Affidavit of service

CITY OF WASHINGTON,
District of Columbia, ss:

Beatrice J. Hegg, having first been duly sworn on oath, deposes and says that she has this day sent by registered mail a copy of the foregoing Reply to Opposition to Petition for Rehearing to Eliot C. Lovett, Esq., 729–15th Street N. W., Washington, D. C., counsel for the Telegraph Herald, and to Horace L. Lohnes and E. D. Johnston, Esq., Munsey Building, Washington, D. C., counsel for Station WSPD.

(Sgd.) BEATRICE J. HEGG.

Subscribed and sworn to before me this —— day of September 1937.

(Sgd.) MIRIAM KOONTZ,
Notary Public, D. C.

My Commission Expires January 3, 1941.

366 *Exhibit No. 1*

SANDERS BROTHERS RADIO STATION, PROFIT AND LOSS STATEMENT, PERIOD ENDING DECEMBER 31, 1934

* * * * * * *

Gross Income:	$20,938.06
Less Allowances	295.20
Net Income for Period	$20,642.86

Exhibit No. 1—Continued

Deductions From Income:		
Music & Records	$135.17	
News Service	899.50	
Telephone & Telegraph	1,729.33	
Royalties (ASCAP)	622.18	
		$3,426.18
Net Paid Income from Station Time		17,216.68
Operating Expense:		
Salaries	5,832.85	
Fuel	234.15	
Light and power	517.90	
Water Service	24.00	
Maintenance and Repairs	1,296.04	
Frequency Expense	99.61	
		8,004.55
Net Profit from Broadcasting		9,212.13
General and Administrative Expense:		
Interest	30.90	
Traveling Expense	179.61	
Dues	2.00	
Drayage	35.24	
Commissions	373.89	
Advertising and Promotions	344.41	
Office Supplies	262.03	
Rent	2,400.00	
Miscellaneous Expense	223.27	
		3,852.35
Operating Profit		5,359.78
Other Expense:		
Legal Expense	125.00	
Grading at Transmitter	125.00	
Reserves	769.25	
Depreciation	6,188.44	
		7,207.69
Net Deficit for Period		1,847.91

567 *Exhibit No. 2*

SANDERS BROTHERS RADIO STATION, PROFIT-AND-LOSS STATEMENT, PERIOD ENDING DECEMBER 31, 1935

Gross Income		$29,040.77
Less Allowances		1,569.42
Net Income for Period		27,471.35
Deductions from Income:		
Music and Records	$1,847.24	
News Service	1,787.37	
Telephone	807.56	
Royalties (ASCAP)	1,057.09	
Net Paid Income from Station Time		21,912.09

Exhibit No. 2—Continued

Operating Expense:		
Salaries	$8,733.70	
Fuel	247.25	
Light and Power	641.48	
Maintenance and Repairs	3,321.77	
Frequency Expense	94.00	
		$13,038.20
Net Profit from Broadcasting		8,873.89
General and Administrative Expense:		
Traveling Expense	59.25	
Commissions	668.95	
Advertising and Promotion	488.89	
Office Supplies	218.21	
Insurance	54.80	
Miscellaneous Expense	193.01	
		1,683.11
Operating Profit		7,190.78
Other Expense:		
Legal Expense	482.59	
Taxes	102.44	
Reserves	3,235.25	
Depreciation	5,688.44	
		9,508.72
Net Loss for Period		2,317.94

568 *Exhibit No. 3*

SANDERS BROTHERS RADIO STATION, PROFIT-AND-LOSS STATEMENT, PERIOD ENDING DECEMBER 31, 1936

* * * * * * * *

Gross Income:		
Time Programs		$35,903.21
Less Allowances		1,053.15
Net Income for Period		34,850.06
Deductions from Income:		
Music and Records	$2,084.70	
News Service	2,122.21	
Telephone and Telegraph	1,176.88	
Talent	520.15	
Royalties (ASCAP)	1,703.07	
		7,607.61
Net Paid Income from Station Time		27,242.45
Operating Expense:		
Salaries—Engineer & Assistants	4,594.00	
Fuel	327.87	
Light and Power	651.24	
Water Service	32.00	
Maintenance and Repairs	1,787.05	
Frequency Expense	87.50	
Net Profit from Broadcasting		19,762.79

Exhibit No. 3—Continued

General and Administrative Expense:		
Salaries	$8,914.00	
Traveling	2,145.65	
Dues and Subscriptions	28.25	
Postage	103.87	
Advertising	137.75	
Office Supplies	256.46	
Insurance	69.38	
Taxes	58.05	
Bridge Fare	156.27	
Legal Expense	2,056.97	
Miscellaneous Expense	42.37	
		$13,969.02
		5,793.71
Other Expense:		
Survey and Engineering	725.60	
A. B. C. Network	1,300.35	
Depreciation	5,723.24	
Reserves	2,601.49	
		10,350.68
		4,556.91
Other Income:		
Accounts Payable, Items charged off		3,362.50
Net Deficit for Period		1,194.41

569 Minute #588

DECEMBER 8, 1937—10:00 A. M.

Excerpt from Minutes of the Federal Communication Commission

Present: Commissioners McNinch, Chairman; Payne, Sykes, Brown, Walker, and Case.

* * * * * * *

Broadcast matters hearing docket

The Commission, upon consideration of a petition of the Sanders Brothers Radio Station (WKBB) requesting a rehearing before the Commission en banc on the application of the Telegraph Herald for construction permit, Docket No. 3967, (said application having been granted by the Broadcast Division on July 2, 1937) and the opposition thereto, denied the petition.

* * * * * * *

In the United States Court of Appeals for the District of Columbia

No. 7078

SANDERS BROTHERS RADIO STATION, A CORPORATION, APPELLANT

vs.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Certificate of T. J. Slowie, secretary of the Federal Communications Commission

I, T. J. Slowie, Secretary of the Federal Communications Commission, do hereby certify that the attached are originals or true and correct copies of all papers and evidence presented to the Federal Communications Commission in the matter of the applications of Telegraph Herald and of Sanders Brothers Radio Station, and also a true and correct copy of the statement of facts, grounds for decision, and order of the Commission complained of by the appellant.

In Witness Whereof, I have this 13 day of January, 1938, set my hand and the seal of the Federal Communications Commission.

[SEAL]

T. J. SLOWIE,
Secretary.

570 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Joint designation of record

Filed April 2, 1938

Now comes Sanders Brothers Radio Station, a corporation, Appellant, Federal Communications Commission, Appellee, and Telegraph Herald, Intervener, by their respective counsel, and file this their Joint Designation of Record for printing, and direct the Clerk to print the record in said cause as filed, except the following parts thereof, which the Clerk is directed to omit, namely:

Pages 10 to 16, inclusive.
Pages 32 to 39, inclusive.
Page 42.
Page 44.
Pages 46 to 51, inclusive.
Page 55.
Pages 66 to 81, inclusive.

Page 186 to and including line 23, page 188.
Page 293 to and including line 23, page 295.
Page 408.
Page 694.
Pages 711 to 715, inclusive.
Pages 744 to 747, inclusive.
Pages 756 to 908, inclusive.
Pages 918 to 919, inclusive.
Pages 921 to 986, inclusive.
Pages 996 to 1006, inclusive.
Pages 1008 to 1009, inclusive.
Page 1036.
Page 1038.
Page 1056.
Page 1061.

571 Pages 1063 to 1065, inclusive.
Page 1088.
Page 1107.
Pages 1130 to 1134, inclusive.

Counsel certify that the material designated for omission is immaterial to the determination of the questions or issues involved in this appeal and that the printing thereof would be a needless expense.

SANDERS BROTHERS RADIO STATION, INC.,
By PERCY H. RUSSELL, JR., *Its Counsel.*
FEDERAL COMMUNICATIONS COMMISSION,
Appellee.
By HAMPSON GARY, *Its General Counsel.*
TELEGRAPH HERALD, *Intervener.*
By ELIOT C. LOVETT, *Its Counsel.*

[File endorsement omitted.]

572 In United States Court of Appeals for the District of Columbia

No. 7087

SANDERS BROTHERS RADIO STATION, A CORPORATION, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION; TELEGRAPH HERALD, A CORPORATION, INTERVENER

Appeal from the Federal Communications Commission

Decided January 23, 1939

Louis G. Caldwell, Reed T. Rollo, and Percy H. Russell, Jr., all of Washington, D. C., for appellant.

Hampson Gary, George B. Porter, Wm. H. Bauer, Fanney Neyman, and Hugh B. Hutchison, all of the Federal Communications Commission, for appellee.

Eliot C. Lovett, of Washington, D. C., for intervener.

Before GRONER, Chief Justice, and MILLER and VINSON, Associate Justices.

Opinion

MILLER, Associate Justice: The Federal Communications Commission granted an application of Telegraph Herald to construct a new radio broadcasting station at Dubuque, Iowa. At the same time it granted an application of Sanders Brothers Radio Station to move its station, WKBB, across the Mississippi River from East Dubuque, Illinois, to Dubuque, Iowa. Sanders Brothers petitioned for a rehearing of the decision granting the Telegraph Herald application; its petition was denied; and this appeal followed. Telegraph Herald intervened herein.

Appellee denies that appellant has an appealable interest. Section 402 (b) (2) of the Communications Act of 1934[4] permits an appeal by any person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing an application for a radio station license. This court has held that the nature of an appellant's grievance can be measured on appeal "only by the reasons therefor which the act requires it to give; and in order to determine its appealable interest we must look—and can look only—to those reasons."[5]

373 In the present case appellant alleged in its statement of reasons for appeal that:

1. The Commission erred in failing to find that there is inadequate and insufficient economic support in Dubuque, Iowa, for the station proposed by the Telegraph Herald.

2. The Commission erred in failing to find that the operation of the station proposed in Dubuque, Iowa, by the Telegraph Herald will result in a financial and economic injury to the appellant, will result in a large loss of operating revenue to the appellant, will further increase its net losses, will impair the service rendered by the appellant to its listening audience, and will destroy the ability of the appellant to render programs of high type and in the public interest.

3. The Commission erred in failing to find that the appellant, which has in the past lost large sums of money through the oper-

[4] Act of June 19, 1934, c. 652, 48 Stat. 1064, 1093; 47 U. S. C. A. § 402 (b) (2) (Supp. [illegible]).

[5] Great Western Broadcasting Ass'n, Inc. v. Federal Communications Comm., 91 F. (2d) 244, 248, 68 App. D. C. 119, 123; see Missouri Broadcasting Corp. v. Federal Communications Comm., 94 F. (2d) 625, 625, 68 App. D. C. 154, 156, cert. denied, 303 U. S. 655.

ation of its station and which is at present failing to earn sufficient money to pay its operating expenses and fixed charges, will lose even greater sums by the operation of the station proposed by the Telegraph Herald.

4. The Commission erred in failing to make any finding with reference to the economic effect upon the appellant by the granting of the application of the Telegraph Herald.

* * * * *

11. The Commission erred in failing to find by written findings made prior to or concurrently with entry of the decision and issuance of the final order that the granting of the application of the Telegraph Herald would adversely affect the interests of Sanders Brothers Radio Station, licensee of WKBB, and will not serve public interest, convenience, and necessity.

These reasons were clearly adequate to present an issue of "economic injury to an existing station through the establishment of an additional station *. * *" and that statement of issue is sufficient to furnish proper grounds of contest on appeal.[6]

In its order, effective July 27, 1937, the Commission determined "that public interest, convenience, and necessity will be served by granting the applications of Telegraph Herald and Sanders Brothers Radio Station for construction permits." Appellant correctly contends that the Commission's findings were insufficient to support this determination and decision, in so far as it relates to intervener's application, since no finding was made concerning the matter of economic injury.

While a radio broadcasting station is not a public utility in the same sense as a railroad, nevertheless, radio communication constitutes interstate commerce, and involves the public interest, and it is in this respect that Congress has exercised its power
574 to regulate it.[7] Since the power of Congress has not been extended to the point of regulating rates for service, or the establishment of rules requiring like service for the entire public, or limiting profits on the basis of investment, or otherwise, the term—public interest, convenience, and necessity—should not be given such a broad meaning as has been applied to it elsewhere in the interpretation of public-utility legislation. For that reason we have held that the Commission "is not required to give the owner of an existing station priority * * * because alone of the primacy of its grant."[8] Nevertheless the Act clearly contemplates that consideration shall be given to

[6] Great Western Broadcasting Ass'n, Inc. v. Federal Communications Comm., 94 F. (2d) 244, 248, 68 App. D. C. 119, 123; Pulitzer Pub. Co. v. Federal Communications Comm., 94 F. (2d) 249, 252, 68 App. D. C. 124, 127.

[7] Federal Radio Comm. v. Nelson Brothers Bond & Mortgage Co., 289 U. S. 266, 279.

[8] Pulitzer Pub. Co. v. Federal Communications Comm., 94 F. (2d) 249, 251, 68 App. D. C. 124, 126.

the equities of existing stations.[9] "In any case where it is shown that the effect of granting a new license will be to defeat the ability of the holder of the old license to carry on in the public interest, the application should be denied unless there are overweening reasons of a public nature for granting it. And it is obviously a stronger case where neither licensee will be financially able to render adequate service. This, we think, is the clear intent of section 402 (b) (2) of the statute, which provides for an appeal by an aggrieved person whose interests are adversely affected by a decision of the commission granting or refusing an application."[10]

Appellee concedes that no finding was made upon the issue of economic injury, but urges that appellant, although given opportunity to do so, failed to furnish evidence to establish the issue; hence that it was not required to make a finding thereon. But the conclusion does not follow. The issue of economic injury having been clearly presented, the Commission was bound to decide it one way or the other, and to make appropriate findings of fact in support of its decision.[11] Absence of findings, whatever the reason therefor, cannot take the place of adequate findings, and the Commission's decision as to public interest, convenience and necessity cannot stand unless supported by such findings.[12] Moreover, it is not the function of this court to review the evidence for the purpose of making findings[13] or of justifying findings not made.[14]

575

In its brief the Commission contends that since both appellant and the intervener were found to be financially qualified, and since proper findings were made upon sufficient evidence concerning

---

[9] Federal Radio Comm. v. Nelson Brothers Bond & Mortgage Co., 289 U. S. 266, 285.

[10] Great Western Broadcasting Ass'n, Inc. v. Federal Communications Comm., 94 F. (2d) 244, 248, 68 App. D. C. 119, 123; Pulitzer Pub. Co. v. Federal Communications Comm., 94 F. (2d) 249, 252, 68 App. D. C. 124, 127.

[11] Great Western Broadcasting Ass'n, Inc. v. Federal Communications Comm., supra note 7: "* * * we think it is a necessary part of the problem submitted to the Commission in the application for broadcasting facilities." The failure of the Commission specifically to report the facts on the issue "leaves the parties in doubt as to a matter essential to the case * * *." Beaumont, Sour Lake & Western Ry. v. United States, 282 U. S. 74, 86. See Saginaw Broadcasting Co. v. Federal Communications Comm., 96 F. (2d) 554, 559, 68 App. D. C. 282, 287, cert. denied, 59 S. Ct. 72; Missouri Broadcasting Corp. v. Federal Communications Comm., 94 F. (2d) 623, 625, 68 App. D. C. 154, 156, cert. denied, 303 U. S. 655.

[12] Saginaw Broadcasting Co. v. Federal Communications Comm., 96 F. (2d) 554, 68 App. D. C. 282, cert. denied, 59 S. Ct. 72; Missouri Broadcasting Corp. v. Federal Communications Comm., supra note 8; Tri-State Broadcasting Co., Inc. v. Federal Communications Comm., 96 F. (2d) 564, 566, 68 App. D. C. 292, 294; Heitmeyer v. Federal Communications Comm., 95 F. (2d) 91, 68 App. D. C. 180.

[13] Florida v. United States, 282 U. S. 194, 215: "In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence, not to make findings for the Commission but to ascertain whether its findings are properly supported." See United States v. Chicago, Milwaukee, St. Paul & Pacific R. R., 294 U. S. 499, 504–505; United States v. Baltimore & Ohio R. R., 293 U. S. 454, 464.

[14] Tri-State Broadcasting Co., Inc. v. Federal Communications Comm., 96 F. (2d) 564, 566, 68 App. D. C. 292, 294: "We cannot review the evidence to determine whether or not there is substantial support therein for findings not made."

population, industries, and business establishments, the assumption is warranted that there are adequate sources of advertising available in the Dubuque area to support the operation of two broadcast stations. This is a possible inference, but viewed in the light of the finding that appellant is losing money is not a necessary one. Another possible inference is that the Commission totally disregarded the issue of economic injury to appellant; and another, that the Commission considered the issue and found it to be without merit. What actually occurred we are left to surmise. To avoid such a situation is the purpose of the rule.[15] The difficulty, therefore, is that the Commission, in its statement of facts and grounds for decision, has not spoken "with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences."[16] Again, in its brief, the Commission says:

The Appellant proposes to continue operating unlimited time, which includes nighttime hours, whereas the Intervener plans to operate only during the day. It is a matter of common knowledge that evening hours of operation are generally recognized as the most desirable from the standpoint of commercial advertising. This fact is clearly demonstrated by the Appellant's own advertising rate card, which shows that charges for time
576 during evening hours are materially higher than for time sold during the day (R. 461–462). Obviously these parties cannot compete during such hours.

This seems to indicate an advantage for appellant over intervener in the competition for financial support of their respective stations, and, moreover, appellee argues therefrom that the two may receive the patronage of different classes of advertisers. Similarly, appellee argues that appellant will have an advantage because it has a network affiliation and "The Intervener cannot, therefore, be deemed a competitor for sponsored net work programs, which are generally considered an important source of revenue." Moreover, the Commission argues that differences—in frequency, power, type of station, rates and program service—between appellant's station and intervener's proposed sta-

[15] See Atchison, Topeka & Santa Fe Ry. v. United States, 295 U. S. 193, 204 [illegible]. See also, Baltimore & Ohio R. R. v. United States, N. D. N. Y., 22 F. Supp. 533, 536–537.

We held in Saginaw Broadcasting Co. v. Federal Communications Comm., supra note 9, that the rule requiring courts and commissions to make basic findings of fact is designed to insure the decision of cases according to the evidence and the law rather than arbitrarily and in derogation of the facts and issues involved; and to apprise the parties and reviewing court of the bases and validity of the decisions thus rendered. In the absence of findings of basic facts the reviewing court cannot determine whether the lower tribunal acted properly in accordance with the evidence presented. The requirement, therefore, is more than a mere technicality, being a safeguard of the interests of all concerned. See Heitmeyer v. Federal Communications Comm., supra note 9; Baltimore & Ohio R. R. v. United States, supra.

[16] United States v. Chicago, Milwaukee, St. Paul & Pacific R. R., 294 U. S. 499, 510–511. See Beaumont, Sour Lake & Western Ry. v. United States, 282 U. S. 74, 86.

tion refute the claim of the former that it will suffer economic injury. It contends further that the testimony in the record "does not sustain Appellant's contention that the service areas of the two stations will be practically the same, *but, on the contrary, shows that that of Intervener will be larger.*" [Italics supplied.] The conclusion seems to be inescapable, therefore, that economic competition between the two will cover the entire area served by appellant and that if the available potential economic support in that area is inadequate, the result may well be disastrous for appellant or for both. The Commission points out also that intervener plans a program service especially designed to serve the agricultural and educational needs of the surrounding rural area "far more comprehensive in scope than programs of the same general character now broadcast by Station WKBB [appellant's station]"; and that intervener will broadcast stock market reports daily, while appellant does not and will not. All of these considerations, persuasively argued by the Commission and fortified by reference to the evidence, indicate inescapably that there was much in the record relating to the issue of economic injury. But it is not sufficient that they be marshalled and presented in the brief on appeal. They must be prepared as findings of fact, upon which the decision of the Commission may be rested. Otherwise the administrative task has not been completed and there is no proper basis for judicial review. Under the circumstances we must hold that the Commission's decision was arbitrary and capricious and consequently must be set aside.[17]

Appellant assigned as one of its reasons for appeal the alleged consideration by the Commission of evidentiary matter not offered or received in evidence. In a motion suggesting a diminution of record filed prior to oral argument, appellant alleged that:

> it is, and has been for a long time in the past, the regular and openly acknowledged practice of the Commission to re-
> 577 quire and receive additional reports such as those described in said paragraphs in each case submitted to it upon report and recommendation of an examiner, and to make use of and consider such additional reports in making its determinations both of law and of fact in each such case. Such additional reports have, according to appellant's information and belief, regularly purported to set forth facts, arguments, principles of

[17] Saginaw Broadcasting Co. v. Federal Communications Comm., 96 F. (2d) 554, 68 App. D. C. 282, cert. denied, 59 S. Ct. 72; Heitmeyer v. Federal Communications Comm., 95 F. (2d) 91, 68 App. D. C. 180; Tri-State Broadcasting Co., Inc. v. Federal Communications Comm., 96 F. (2d) 564, 68 App. D. C. 292; Missouri Broadcasting Corp. v. Federal Communications Comm., 94 F. (2d) 623, 68 App. D. C. 154, cert. denied, 303 U. S. 655; Florida v. United States, 282 U. S. 194, 215; Atchison, Topeka & Santa Fe Ry. v. United States, 295 U. S. 193, 202.

law and recommendations as to conclusions of fact and law in the case wherein they have been submitted, and at times have set forth facts not shown by or in contradiction to the evidence, all for the purpose of guiding or influencing the members of the Commission in making their determinations and decisions. Appellant is informed and believes, and therefore states the fact to be, that such additional reports were submitted to the Commission in this case, and that the Commission made use of and considered such additional reports in making its determinations of law and of fact in the instant case. The Commission, however, refuses to permit parties to any case before it to have access to or to learn the contents of any of such additional reports and appellant is unable, therefore, to state the contents of any such additional report submitted to and considered by the Commission in this case.

In reply to the motion the Commission said that the reports referred to "do not themselves constitute evidence in the record nor were they so considered by the Commission in making its decision." We denied the motion. The contention was urged in appellant's brief and again on oral argument. Even the necessity of administrative efficiency cannot excuse the use of star chamber procedures to deprive a citizen of a fair hearing. Consequently, if the Commission had based its decision upon matter not introduced in evidence at the hearing,[19] as was done in United States v. Abilene & Southern Ry.,[20] the order would have been void, because such matter cannot be considered as evidence when it is not introduced as such;[21] a finding without evidence is beyond the power of the Commission;[22] and an order or decision unsupported by evidence is void.[23]

578 However, appellant's assertion—upon information and belief—of improper action upon the part of the Commission is entirely unsupported by the record and is contradicted by appellee's positive denial heretofore noted. In its brief, on

---

[19] Morgan v. United States, 304 U. S. 1, 14–15.

[20] See United States v. Baltimore and Ohio Southwestern R. R., 226 U. S. 14; 265 U. S. 274.

[21] United States v. Abilene & Southern Ry., 265 U. S. 274, 288. See Morgan v. United States, 298 U. S. 468, 480; West Ohio Gas Co. v. Public Utilities Comm., 294 U. S. 63, 69; Crowell v. Benson, 285 U. S. 22, 48; Interstate Commerce Comm. v. Louisville and Nashville R. R., 227 U. S. 88, 93; Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. (2d) 757, 761, 66 App. D. C. 375, 379; Denver Union Stock Yard Co. v. United States, D. Colo., 37 F. (2d) 735, 752.

[22] See cases cited in note 18, supra.

[23] Morgan v. United States, 298 U. S. 468, 481–482: "This necessary rule does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by the examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Argument may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them. That duty undoubtedly may be an onerous one, but the performance of it in a substantial manner is inseparable from the exercise of the important authority conferred." See The Chicago Junction Case, 264 U. S. 258, 263.

this appeal, the Commission described the files which it keeps in connection with applications filed with it and said: "neither these files nor the contents thereof are used as evidence in any case after it is designated for hearing except as the contents of the technical or legal recommendations may be incorporated into the record by the testimony of witnesses under oath and subject to cross-examination." Under the circumstances the presumption of regularity of official conduct is controlling.[24]

Several other reasons for appeal were assigned by appellant, but as the decision of the Commission must be reversed in any event, it is not necessary to consider them.

Reversed and remanded.

579 In United States Court of Appeals for the District of Columbia

No. 7087, January Term, 1939

SANDERS BROTHERS RADIO STATION, A CORPORATION, APPELLANT

vs.

FEDERAL COMMUNICATIONS COMMISSION; TELEGRAPH HERALD, A CORPORATION, INTERVENER

Judgment

January 23, 1939

Appeal from the Federal Communications Commission

This cause came on to be heard on the transcript of the record from the Federal Communications Commission and on motions to dismiss which were argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said Federal Communications Commission in this cause be, and the same is hereby, reversed, and that this case be, and it is hereby, remanded to the said Federal Communications Commission for further proceedings in conformity with the opinion of this Court.

And it is further ordered that the costs in this Court of $1,238.24 shall be paid two-thirds by appellant, in the amount of $825.49, and one-third by the intervener, in the amount of $412.75.

Per Mr. Justice Miller, January 23, 1939.

---

[24] Anniston Mfg. Co. v. Davis, 301 U. S. 337, 357; United States v. Chemical Foundation, Inc., 272 U. S. 1, 14–15; Concordia Fire Ins. Co. v. Illinois, 292 U. S. 535, 547; Proctor & Gamble Co. v. Coe, 96 F. (2d) 518, 521, 68 App. D. C. 246, 249, cert. denied, 59 S. Ct. 65; United States v. Barry, 6 Cir., 67 F. (2d) 763, 764, cert. denied, 292 U. S. 648.

580 *Clerk's memorandum*

Petition for Rehearing and motion for stay of mandate filed February 9, 1939.

581 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order denying rehearing, etc.

August 2 A. D. 1939

On consideration of the motion for rehearing or for stay of the issuance of the certified copy of the judgment herein,

It is ordered by the Court that a rehearing be, and it is hereby, denied, and that the issuance of the certified copy of the judgment be, and it is hereby, stayed for thirty days.

582 In United States Court of Appeals for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Designation of record

Filed Oct. 16, 1939

The clerk will please prepare a transcript on application to the Supreme Court of the United States for certiorari in the above-entitled cause including therein the following:

1. Printed record;
2. Opinion;
3. Order;
4. Docket entry showing motion for rehearing and stay of mandate was filed;
5. Minute entry of order denying same;
6. This designation;
7. Clerk's certificate.

ROBERT H. JACKSON.
ROBERT H. JACKSON,
Solicitor General.

Service of designation of record acknowledged this 16th day of October 1939.

REED T. ROLLO,
Counsel for Sanders Brothers Radio Station, a Corporation.

ELIOT C. LOVETT,
Counsel for Telegraph Herald, a Corporation.

583 [Clerk's certificate to foregoing transcript omitted in printing.]

584 Supreme Court of the United States

Order allowing certiorari

Filed December 11, 1939

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 43906. U. S. Court of Appeals, District of Columbia. Term No. 499. Federal Communications Commission, Petitioner, vs. Sanders Brothers Radio Station. Petition for a writ of certiorari and exhibit thereto. Filed November 2, 1939. Term No. 499 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE 1941

FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 2 1939
CHARLES ELMORE CROPLEY
CLERK

No. 499

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	5
Specification of errors to be urged	8
Reasons for granting the writ	9
Conclusion	16
Appendix	17

CITATIONS

Cases:	
Alabama Power Co. v. *Ickes*, 302 U. S. 464	13
Assigned Car Cases, 274 U. S. 564	15
Charles River Bridge v. *The Warren Bridge* 11 Pet. 420	13
Heath v. *Wallace*, 138 U. S. 573	13
Manufacturers' R'y Co. v. *United States*, 246 U. S. 457	15
Norwegian Nitrogen Co. v. *United States*, 288 U. S. 294	13
Pacific States Box & Basket Co. v. *White et al.*, 296 U. S. 176	16
Railroad Company v. *Ellerman*, 105 U. S. 166	13
Tennessee Electric Power Co. v. *Tennessee Valley Authority*, 306 U. S. 118	13
United States v. *Louisiana*, 290 U. S. 70	15
Statute:	
Communications Act of 1934, c. 652, 48 Stat. 1064, as amended June 5, 1936, c. 511, Sec. 2, 49 Stat. 1475, and May 20, 1937, c. 229, 50 Stat. 189:	
Sec. 3 (h)	17
Sec. 301	17
Sec. 304	11, 18
Sec. 307 (a)	18
Sec. 307 (b)	19
Sec. 307 (c)	19
Sec. 307 (d)	11, 19
Sec. 307 (e)	19
Sec. 309 (a)	10, 11, 15, 20
Sec. 309 (b)	20
Sec. 310 (b)	11
Sec. 311	21
Sec. 312 (a)	11

Statutes—Continued.
Communications Act of 1934, etc.—Continued. Page
Sec. 313 ..... 11, 21
Sec. 314 22
Sec. 319 (a) 3, 10, 14, 15
Sec. 319 (b) 4
Sec. 402 (a) 24
Sec. 402 (b) 3, 5, 10, 14, 24
Sec. 402 (d) 25
Sec. 402 (c) 26
Sec. 402 (e) 2
Sec. 414 27
Miscellaneous:
House Rep. No. 1918, 73d Cong., 2d Sess. 12
Sen. Doc. No. 137, 72d Cong., 1st Sess. 12
Sen. Rep. No. 781, 73d Cong., 2d Sess. 12

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 499

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER

v.

SANDERS BROTHERS RADIO STATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the Federal Communications Commission, hereinafter referred to as the Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled cause on January 23, 1939, reversing and remanding said cause to the Commission for the purpose of making findings of fact upon certain issues specified by the Court.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 572) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 23, 1939. A petition for rehearing filed by the Commission was denied on August 2, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The respondent appealed from a decision of the Commission granting to another applicant a permit for the construction of a radio broadcasting station in the same territory in which the respondent operated a station under a license issued by the Commission. The respondent had intervened in the proceeding before the Commission and opposed the issuance of the permit on the ground that the construction of the new station would result in competition which would inflict pecuniary loss upon respondent. The questions are:

1. Is the respondent an "aggrieved person whose interests are adversely affected" by a decision of the Commission, within the meaning of Section 402 (b) (2) of the Communications Act, so that the Court of Appeals had jurisdiction to entertain the appeal?

2. Was the Commission obligated to make findings of fact on the issue of whether the granting of the permit would inflict financial loss upon the respondent, and in their absence should the Commission's decision granting the construction permit be set aside as being arbitrary and capricious?

STATUTE INVOLVED

Section 319 of the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended May 20, 1937, c. 229, 50 Stat. 189, provides:

> (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of

transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the

granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

Section 402 (b) of the Act provides:

> An appeal may be taken in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:
>
> (1) By any applicant for a construction permit for a radio station * * * whose application is refused by the Commission.
>
> (2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

Other pertinent provisions of the Act are printed in the Appendix, *infra*, pages 17–27.

STATEMENT

The respondent, Sanders Brothers Radio Station, was the licensee of Station WKBB, located at East Dubuque, Illinois (R. 1). On January 20, 1936, Telegraph Herald filed an application for a construction permit to erect and operate a broadcast station at Dubuque, Iowa, on the frequency 1340 kc. with a power output of 500 w, to operate

during daytime hours only (R. 8). The application was designated for hearing, and notice of the time and place of hearing and the issues to be determined were given the applicant (R. 23–26). On August 18, 1936, the respondent filed a petition to intervene in the proceeding (R. 27), alleging that Station WKBB, of which it is the licensee, derives its revenue principally from the City of Dubuque, Iowa, and that there was insufficient advertising revenue available in Dubuque to support an additional broadcast station.

At the time the Telegraph Herald application was designated for hearing, respondent had pending before the Commission an application for a construction permit to move the transmitter and principal studios of its broadcast station, WKBB (then operating at East Dubuque, Illinois), across the Mississippi River to Dubuque, Iowa, and, in addition, to install a new antenna and ground system in connection with this station (R. 30).

On September 14, 1936, a hearing was regularly held at Washington, D. C., in a consolidated proceeding on both of the applications, before an examiner appointed by the Commission. Both applicants appeared and offered evidence in support of their respective applications. (R. 39 *et seq.*) The respondent introduced evidence tending to show that prior to the hearing its station had operated at a financial loss (R. 450). This was the only evidence offered by respondent in support of

its contention that the granting of the construction permit would inflict financial loss upon it.

The examiner submitted his report on October 31, 1936, in which he recommended that the application for a construction permit filed by the Telegraph Herald be denied and that the application of the respondent be granted (R. 485). The Telegraph Herald filed exceptions to the examiner's report (R. 486), and oral argument was requested by both applicants (R. 486, 489). On February 11, 1937, oral argument was heard before the Broadcast Division of the Commission (R. 490).

The Broadcast Division entered its final order on July 2, 1937, granting the applications of both the respondent and the Telegraph Herald, effective July 27, 1937 (R. 494). On July 30, 1937, the Broadcast Division handed down its Statement of Facts and Grounds for Decision (R. 496). The Commission made no findings upon the issue of financial loss tendered by respondent's petition.

Respondent filed a petition for rehearing before the full Commission on the decision of the Broadcast Division granting the application of Telegraph Herald for a construction permit (R. 510). Thereafter, on December 8, 1937, the petition for rehearing was denied without opinion by the full Commission (R. 569).

On December 14, 1937, the respondent appealed from the order of the Commission granting the application of Telegraph Herald to the United States

Court of Appeals for the District of Columbia and asked the court to issue a stay of the Commission's order pending the determination of the appeal (R. 1). A stay was granted on December 23, 1937. On March 17, 1938, the Telegraph Herald filed a petition to intervene, which was granted by the court (R. 4). Motions to dismiss were filed by the Telegraph Herald and the Commission on January 10, 1938, and January 24, 1938, respectively.

On January 23, 1939, the Court of Appeals reversed and remanded the case to the Commission upon the following grounds: (1) The respondent was a person aggrieved whose interests are adversely affected, within the meaning of Section 402 (b) (2) of the statute and that accordingly the court had jurisdiction to entertain the appeal. (2) The Commission erred in failing to make findings on the issue as to whether the granting of the construction permit would inflict economic injury upon respondent; in the absence of such findings the Commission's decision granting the construction permit was arbitrary and capricious and should be set aside.

The Commission filed a petition for rehearing, which was denied on August 2, 1939 (R. 578).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

(1) In holding that it had jurisdiction to decide the appeal.

(2) In holding that the Commission's decision to grant the application must be supported by formal findings of fact.

(3) In holding that the Commission must make findings of fact with respect to the competitive effect on the respondent's financial condition of the proposed operation of the new station before it may grant a permit for its construction.

(4) In holding that the Commission's decision to grant the application was arbitrary and capricious because not supported by findings as to the probable competitive effect of the new station on the respondent's financial condition.

(5) In failing to dismiss the appeal.

(6) In setting aside the decision of the Commission granting the permit to build a new station.

(7) In remanding the case to the Commission with directions to make formal findings of fact on the question of what the competitive effect of the proposed operation of the new station would be on the financial condition of the respondent.

REASONS FOR GRANTING THE WRIT

I

The decision below raises questions of large public importance which should be decided by this Court. The effect of the decision below is to confer upon a licensee under the Communications Act the legal right to object to the construction of a competitive station on the ground that competition

will lead to financial loss, and to compel the Commission to grant or deny applications for broadcast licenses according to the economic effects the competition of the proposed new station would have upon existing licensees. The standards guiding issuance of broadcast licenses lie at the heart of the Act, and under Section 402 (b), *supra*, the question can be raised only in the court below. Whether the court below, on the one hand, or the Commission, on the other hand, has correctly interpreted the Act, it seems plain that final resolution of this controversy should come from this Court. We shall, however, indicate briefly some of the reasons which show the court below to have erred.

1. The statute gives the competing licensee no right to object to the construction of a competing station on the ground that the competition will lead to financial loss. Not only is there no express provision but the implications point to the contrary conclusion. (a) Section 319 does not require the Commission to hold a hearing before granting or denying a broadcast construction license, while Section 309 (a) requires a hearing only if the Commission upon application for a station license determines that it should not be granted. The Act intends, then, to guard the right to protest the denial rather than the granting of licenses, and in this regard at least takes no note of competitive injuries. (b) The Act sets up the same standards of "public convenience, interest or necessity" for

the licensing of all other types of radio stations, and prescribes the same licensing procedure as for broadcast stations. Economic injury to competitors is plainly inapplicable, for example, in the case of amateur and police stations. (c) Section 307 (d) requires that applications for renewal be "governed by the same considerations and practice which affect the granting of original applications." The decision below would seem to mean that a successful broadcast station, drawing business from its competitors, should be denied a renewal license. (d) The decision of the court below that an existing licensee could assert its economic interest in freedom from competition assumes a property interest in the license which is contradicted by the statutory delineation of its nature. It is plain enough that the statute contemplates a privilege which is neither exclusive nor absolute.[1]

2. Section 313, however, provides a more fundamental answer to the decision below. That section declares that the antitrust laws shall apply

[1] The license is granted for a relatively short period of time (Section 307 (d)); it confers no property right in the use of the facilities licensed (Section 309 (a) (1)); it may not be transferred or assigned without the written consent of the Commission (Section 310 (b)); the grant is strictly limited to its terms and may be revoked or modified as the public interest requires (Section 312 (a)); applicants for a license are required to sign "a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise" (Section 304).

to interstate radio communication, and that a license may be revoked for their violation. This provision contradicts any argument that the Act is designed to substitute a regulated monopoly for the normal competitive safeguards. Competition is not only expected but is affirmatively to be enforced. Indeed, this is the very foundation of the radio broadcast industry under the Act.[2] The Act confers no authority on the Commission to regulate the advertising prices, the financial affairs, or the business practices of radio broadcast stations. Instead, reliance is placed upon the competitive control which is expected to follow from the fact that advertising revenues will roughly be fixed by the ability of a station to attract and hold a listening audience.[3] The distinction drawn by the court below between ordinary competition and that which will defeat the ability of the licensee to carry on (R. 574) is unwarranted. If competition is to be effective, it must always contain the threat, and

[2] The legislative history of the Communications Act of 1934 is barren of any suggestion that the radio broadcast industry was intended to be exempt from the usual forces of a competitive economy. See the report of the Senate Committee, Senate Report No. 781, 73d Congress, 2d Session, and the report of the Conference Committee, House Report No. 1918, 73d Congress, 2d Session.

[3] A discussion of the so-called American System of Broadcasting is contained in a report of the Chairman of the Federal Radio Commission, pursuant to Senate Resolution No. 129, 72d Cong., 1st Sess., Senate Document No. 137, p. 36, 72d Cong., 1st Sess.

must sometimes produce the result, of a destructive competition.

3. The administrative construction is uniform and long continued. Throughout the history of the Commission and its predecessors, the Federal Radio Commission and the Secretary of Commerce, not a single instance is known of a refusal to issue a license for a new radio station because the competition created by the operation of that station would inflict financial loss upon others licensed under the Act. The contemporaneous administrative construction is, under familiar canons, entitled to great if not compelling weight. *Heath* v. *Wallace*, 138 U. S. 573, 582; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315.

4. The decision of the court below that a right to be protected against the effects of competition can be implied from the statute as a whole is in conflict with long-settled principles. The holder of a license or a franchise to conduct a business has no legal standing to object to the action of a public authority in authorizing a competitive enterprise, no matter how severe the economic injury resulting from the competition may be. *Charles River Bridge* v. *The Warren Bridge*, 11 Pet. 420; *Railroad Company* v. *Ellerman*, 105 U. S. 166, 173–174; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 483; *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118. Where, as here, the license relied upon is neither exclusive nor abso-

lute, the case for application of this rule is even stronger than in the decisions cited.

5. Section 402 (b) of the Act, it is true, provides that an appeal may be taken to the court below not only by an applicant for a construction permit but also "by any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application." This section plainly does not authorize persons without an appropriate legal interest to appeal a decision granting the license, and the foregoing paragraphs show that a licensee fearing competitive damage has no such interest.

II

The court below held that the Commission's action in issuing the construction permit was arbitrary and capricious because it did not make findings on the issue of economic injury tendered by the respondent. This, in the event economic injury should be held material to action on the application, also raises a question which should be decided by this Court. Problems as to the nature of the findings which the Commission must make when it issues or denies a construction permit under Section 319 are of great importance in the administration of the statute, since the Commission would be subjected to an impossible burden if it were required to make specific findings upon each relevant ground for granting each of the many thousand applications for licenses which are filed annually.

The only evidence presented by the respondent

in support of its claim that the construction of a new station would inflict financial injury upon it was evidence that heretofore respondent has been unable to operate its station at a profit. The Commission made no findings on the basis of this evidence, and necessity (R. 504). The court below the permit would serve the public interest, convenience, and necessity (R. 504). The court below held that despite this finding the Commission's action was fatally defective because the Commission did not make findings on the issue of economic injury. We submit that, even if it be assumed that respondent had legal standing to object to the issuance of the license to another, this holding is erroneous. Section 319 of the statute does not require the Commission either to hold a hearing or to make findings when it grants or denies a construction permit; indeed Section 309 (a) in terms authorizes the Commission to grant the application for the correlative station license upon examination of the application. In the absence of a legislative direction to the contrary, the Commission was under no obligation to make any findings when it issued the construction permit. Compare *Assigned Car Cases*, 274 U. S. 564; *United States* v. *Louisiana*, 290 U. S. 70; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457; *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari to the United States Court of

Appeals for the District of Columbia should be granted.

ROBERT H. JACKSON,
Solicitor General.

WILLIAM J. DEMPSEY,
General Counsel,
Federal Communications Commission.

NOVEMBER 1939.

APPENDIX

Communications Act of 1934, c. 652, 48 Stat. 1064, as amended June 5, 1936, c. 511, Sec. 2, 49 Stat. 1475, and May 20, 1937, c. 229, 50 Stat. 189:

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

* * * * * *

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

* * * * * *

SEC. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the

same Territory, possession, or district; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

* * * * * *

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

* * * * * *

SEC. 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant there-

for a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

(e) No renewal of an existing station license shall be granted more than thirty

days prior to the expiration of the original license.

* * * * *

SEC. 309. (a) If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

* * * * *

SEC. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

* * * * *

SEC. 313. All laws of the United States, relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil

of criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

SEC. 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any in-

terest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case the purpose is

and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

* * * * * *

SEC. 402. (a) The provisions of the Act of October 22, 1913 (38 Stat. 219), relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except any order of the Commission granting or refusing an application for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, or suspending a radio operator's license) and such suits are hereby authorized to be brought as provided in that Act.

(b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

(c) Such appeal shall be taken by filing with said court within twenty days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington. The Commission shall thereupon immediately, and in any event not later than five days from the date of such service upon it, mail or otherwise deliver a copy of said notice of appeal to each person shown by the records of the Commission to be interested in such appeal and to have a right to intervene therein under the provisions of this section, and shall at all times thereafter permit any such person to inspect and make copies of the appellant's statement of reasons for said appeal at the office of the Commission in the city of Washington. Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application or order involved, and also a like copy of its decision thereon, and shall, within thirty days thereafter, file a full statement in writing of the facts and grounds for its decision as found and given by it, and a list of all interested persons to whom it has mailed or otherwise delivered a copy of said notice of appeal.

(d) Within thirty days after the filing of said appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of shall be considered an interested party.

(e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however*, That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

(f) The court may, in its discretion, enter judgment for costs in favor of or against an

appellant and/or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

* * * * *

SEC. 414. Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

U. S. GOVERNMENT PRINTING OFFICE: 1939

FILE COPY

Office - Supreme Court, U. S.
JAN 27 1940
CHARLES ELMORE CROPLEY
CLERK

No. 499

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	8
Summary of Argument	9
Argument	15
I. Under the Communications Act of 1934, the Commission, in passing upon an application for a construction permit for a new broadcast station, is under no duty to protect existing licensees from competition	16
II. Respondent, as a person who is aggrieved or whose interests are affected only by the threat of prospective competition, has no standing to seek review of the Commission's decision	37
III. The Commission was not required to make findings with respect to the competitive effect of granting the permit upon existing licensees	47
Conclusion	55
Appendix	56–70

CITATIONS

Cases:

Alabama Power Co. v. *Ickes*, 302 U. S. 464	30, 39, 41
Beaumont, S. L. & W. Ry. Co. v. *United States*, 282 U. S. 74	53
Brewster v. *Gage*, 280 U. S. 327	34
Carolina Power and Light Co. v. *South Carolina Public Service Authority*, 94 F. (2d) 520	42
Charles River Bridge v. *The Warren Bridge*, 11 Pet. 420	30
Chicago Junction Case, 264 U. S. 258	24
Claiborne-Annapolis Ferry Co. v. *United States*, 285 U. S. 382	24
Costanzo v. *Tillinghast*, 287 U. S. 341	34
Fall River Herald News Publishing Co. case, 5 F. C. C. 377	35
Florida v. *United States*, 282 U. S. 194	53
Frost v. *Corporation Commission*, 278 U. S. 515	22, 42
Great Western Broadcasting Ass'n, Inc., v. *Federal Communications Commission*, 94 F. (2d) 244	37
Heitmeyer v. *Federal Communications Commission*, 95 F. (2d) 91	48, 51

Cases—Continued. Page

Hewitt v. *Schultz*, 180 U. S. 139 34
Edward Hines Trustees v. *United States*, 263 U. S. 143 ..... 38, 44
R. R. Jackman case, 5 F. C. C. 496 35
McCaughn v. *Hershey Chocolate Co.*, 283 U. S. 488 34
Missouri Broadcasting Corp. v. *Federal Communications Commission*, 94 F. (2d) 623 ..... 48, 50
Muskrat v. *United States*, 219 U. S. 346 40
O'Donoghue v. *United States*, 289 U. S. 516 ..... 39, 40
Postum Cereal Co. v. *Calif. Fig Nut Co.*, 272 U. S. 693 40
Radio Commission v. *General Electric Co.*, 281 U. S. 464 ..... 40, 52
Radio Comm'n v. *Nelson Bros. Co.*, 289 U. S. 266 ..... 17, 40, 52
Railroad Co. v. *Ellerman*, 105 U. S. 166 ..... 30, 38, 42
Saginaw Broadcasting Co. v. *Federal Communications Commission*, 96 F. (2d) 554, certiorari denied, 305 U. S. 613 ..... 48, 51
Spartanburg Advertising Co., In re, Docket No. 5451, decided January 10, 1940 39
Sprunt & Son v. *United States*, 281 U. S. 249 ..... 38, 44
St. Louis Southwestern Railway Co. v. *Missouri Pacific Railroad Co.*, 289 U. S. 76 24
Tennessee Power Co. v. *Tennessee Valley Authority*, 306 U. S. 118 ..... 30, 39, 42
Texas & Pac. Ry. v. *Gulf, etc., Ry.*, 270 U. S. 266 ..... 23, 24
The Telegraph Herald v. *Federal Radio Commission*, 66 F. (2d) 220 42
United States v. *Baltimore & Ohio R. Co.*, 333 U. S. 454 53
United States v. *Chicago North Shore R. Co.*, 288 U. S. 1 34
United States v. *Merchants & Manufacturers Traffic Ass'n*, 242 U. S. 178 ..... 38, 44
United States v. *Moore*, 95 U. S. 760 34
Virginian Ry. v. *Federation*, 300 U. S. 515 ..... 50, 52
Virginian Ry. v. *United States*, 272 U. S. 658 53
Yankee Network, Inc., v. *Federal Communications Commission*, 107 F. (2d) 212 39

Statutes:

Transportation Act of 1920, c. 91, 41 Stat. 456 24
Radio Act of 1927, c. 169, 44 Stat. 1162:
Sec. 16, as amended; c. 788, 46 Stat. 844 ..... 40, 52
Emergency Railroad Transportation Act of 1933, c. 91, 48 Stat. 211 24
Communications Act of 1934, June 19, 1934, c. 652, 48 Stat. 1064, as amended by the Act of June 5, 1936, c. 511; 49 stat. 1475; and as amended by the Act of May 20, 1937, c. 229, 50 Stat. 189 (U. S. C., Title 47, Sec. 151 *et seq.*):
Sec. 3 ..... 18, 24, 56
Sec. 301 ..... 29, 56
Sec. 303 57
Sec. 304 58

Statutes—Continued. Page
Communications Act of 1934—Continued.
Sec. 307 ..... 10, 17, 28, 32, 58
Sec. 308 48
Sec. 309 ..... 11, 28, 44, 48, 59
Sec. 310 ..... 29, 60
Sec. 311 61
Sec. 312 ..... 29, 61
Sec. 313 ..... 11, 27, 63
Sec. 314 63
Sec. 319 65
Sec. 402 ..... 9, 13, 15, 37, 38, 39, 40, 43, 44, 46, 49, 50, 51, 66
Sec. 405 69
Sec. 414 ..... 53, 70
Oklahoma Compiled Statutes 1921, § 3712–3718 22
Miscellaneous:
F. C. C. Release No. 34845 46
F. C. C. Rules and Regulations § 334, 4 Federal Register 2717 28
H. Rep. No. 1665, 71st Cong., 2d Sess. 40, 52
H. Rep. No. 1918, 73d Cong., 2d Sess. 27
Printer's Ink, June 16, 1938 46
Printer's Ink, March, 1939 46
S. Doc. 137, 72d Cong., 1st Sess. 30
S. Rep. No. 1105, 71st Cong., 2d Sess. 40, 52
S. Rep. No. 781, 73d Cong., 2d Sess. 27

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 499

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 470–477) is reported in 106 F. (2d) 321.

JURISDICTION

The judgment of the Court of Appeals was entered on January 23, 1939. A petition for rehearing, filed by the Commission, was denied on August 2, 1939. The petition for a writ of certiorari was filed on November 2, 1939, and was granted December 11, 1939. The jurisdiction of this Court

rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Respondent appealed from a decision of the Commission granting to another applicant a permit for the construction of a radio broadcast station in the same territory in which respondent operates a station under a license issued by the Commission. Respondent had intervened in the proceeding before the Commission and had opposed the issuance of the permit. The questions are:

1. Is respondent a person "aggrieved or whose interests are adversely affected" by the decision of the Commission, within the meaning of Section 402 (b) (2) of the Communications Act, so that the Court of Appeals had jurisdiction to entertain the appeal?

2. Was the Commission obligated to make findings of fact on the issue of whether the granting of the permit would inflict financial loss upon respondent and, in their absence, should the Commission's decision granting the construction permit be set aside as being arbitrary and capricious?

STATUTE INVOLVED

The pertinent provisions of the Communications Act of 1934 (Act of June 19, 1934, c. 652, 48 Stat. 1064, as amended by the Act of June 5, 1936, c. 511, 49 Stat. 1475; and as amended by the Act of May

20, 1937, c. 229, 50 Stat. 189; 47 U. S. C. § 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 56–70.

STATEMENT

Respondent has for many years been the licensee of a radio broadcast station, WKBB, formerly located at East Dubuque, Illinois (R. 43–416) and now located at Dubuque, Iowa. On January 20, 1936, the Telegraph Herald, a daily newspaper in Dubuque, Iowa, filed an application for a construction permit to erect a broadcast station to operate during day-time hours only at Dubuque, Iowa, directly across the Mississippi River from East Dubuque, Illinois, on the frequency 1340 kc. with a power output of 500 watts (R. 6). The application was designated for hearing, and notice of the time and place of hearing and of the issues to be determined was given to the applicant Telegraph Herald (R. 20–22). On August 18, 1936, respondent filed a petition to intervene in the proceeding (R. 22), alleging that Station WKBB, of which it is the licensee, derives its revenue principally from the city of Dubuque, Iowa, and that there is insufficient advertising revenue available in Dubuque to support an additional broadcast station.

At the time the Telegraph Herald application was designated for hearing, respondent had pending before the Commission an application for a construction permit to move the transmitter and principal studios of Station WKBB from East

Dubuque, Illinois, to Dubuque, Iowa, and, in addition, to install a new antenna and ground system in connection with its station (R. 25–33). Respondent's application was filed on May 14, 1936, several months after the Telegraph Herald application was filed (R. 409).

A consolidated hearing on the two applications was held before an examiner, commencing on September 14, 1936 (R. 33). Both the respondent and the Telegraph Herald appeared and offered evidence in support of their respective applications (R. 33–380). Respondent introduced evidence showing that prior to the hearing its station had operated at a financial loss (R. 160, 369–370); that the area proposed to be served by the Telegraph Herald station was substantially the same as the area served by respondent (R. 412, 415); that from 85 to 90 percent of respondent's gross revenue came from Dubuque (R. 161); and that of the sixty advertisers in Dubuque relied upon for commercial support of the proposed station, thirty-three had advertised over respondent's station in the past (R. 178).

The examiner submitted his report on October 31, 1936, recommending that the application of the Telegraph Herald be denied and that the application of respondent be granted (R. 380–400). The Telegraph Herald filed exceptions to the examiner's report (R. 400), and oral argument was requested by both applicants (R. 400, 403). On

February 11, 1937, oral argument on behalf of both applicants was made before the Broadcast Division of the Commission (R. 404, 409).

The Broadcast Division of the Commission entered a final order on July 2, 1937, granting the applications of both the respondent and the Telegraph Herald, effective July 27, 1937 (R. 406–407). In its order the Broadcast Division recited that it "found that public interest, convenience, and necessity would be served by granting the applications of the Telegraph Herald for construction permit, and Sanders Brothers Radio Station for construction permit" (R. 406). On July 27, 1937, respondent filed a petition to extend the effective date of the decision, which was denied without opinion by the full Commission on August 18, 1937 (R. 416–418).

On July 30, 1937, the Broadcast Division adopted and published its Statement of Facts and Grounds for Decision (R. 408). The statement recited, among other things: (1) that both applicants were legally, technically, and financially qualified to undertake the necessary construction and operation involved (R. 410–413, 413–416); (2) that there was a need in Dubuque and in the surrounding area of Iowa, Illinois, and Wisconsin for the services proposed by both stations (R. 410); and (3) that no questions of electrical interference were involved because the new station to be operated by the Telegraph Herald would operate during day-

time hours only on the frequency 1340 kc. with a power output of 500 watts, while Station WKBB would continue operation with unlimited time on the air on the frequency 1500 kc. with a power output of 250 watts (R. 413–416).

On July 30, 1937, respondent filed with the Commission a notice and demand that it be served with copies of all reports submitted to the Broadcast Division by the law, engineering and examining departments of the Commission relative both to the application of the respondent and to that of the Telegraph Herald. The demand was refused without opinion by the Broadcast Division on August 18, 1937 (R. 418–420).[1] On August 11, 1937, respondent filed a petition for a rehearing before the full Commission on the decision of the Broadcast Division granting the application of the Telegraph Herald for a construction permit (R. 420–436). The granting of this petition was opposed by the Telegraph Herald (R. 436–453), and a reply to this opposition was filed by respondent on September 10, 1937 (R. 453–468). The petition for rehearing was denied without opinion by the full Commission on December 8, 1937 (R. 468).

On December 14, 1937, respondent appealed to the court below from the order of the Commission

[1] This request was renewed in the Court of Appeals in the form of a suggestion for diminution of record requiring that these reports be sent to the Court of Appeals as a portion of the record. This request was denied by the Court of Appeals on May 6, 1938 (R. 475–476).

granting the application of the Telegraph Herald and asked that court to issue a stay of the Commission's order pending determination of the appeal (R. 1–3).[2] A stay was granted on December 23, 1937. On January 6, 1938, the Telegraph Herald filed a petition to intervene in the proceedings in the Court of Appeals which was granted by that court (R. 4). Motions to dismiss were filed by the Telegraph Herald and by the Commission on January 10, 1938, and January 24, 1938, respectively.

On January 23, 1939, the Court of Appeals, without specifically adverting to whether respondent is "a person aggrieved or whose interests are adversely affected" within the meaning of Section 402 (b) (2) of the Act, reversed and remanded the case to the Commission upon the following grounds: (1) that an "issue of 'economic injury to an existing station through the establishment of an additional station' * * * is sufficient to furnish proper grounds of contest on appeal"; and (2) that the Commission erred in failing to make findings on the issue as to whether the granting of the construction permit to the Telegraph Herald would inflict economic injury upon respondent, and in the ab-

[2] No appeal was taken by any party from that part of the order of the Commission which granted the application of respondent to move the transmitter and studios of Station WKBB to Dubuque, Iowa, and to install a new antenna and ground system, and the order of the Commission is now final in this respect.

sence of such findings the Commission's decision granting the construction permit was arbitrary and capricious and must be set aside as a matter of law (R. 470–477).

On February 9, 1939, the Commission filed a petition for rehearing in which it contended that the court below had no jurisdiction to entertain the appeal because the appellant was not a person "aggrieved or whose interests are adversely affected" by the decision of the Commission complained of, and that, even if the court had jurisdiction, it erred in remanding the case for further findings, since the Act does not require the Commission to make findings when it grants an application for authority to construct and operate a radio broadcast station. The petition for rehearing was denied on August 2, 1939 (R. 478).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that it had jurisdiction to decide the appeal.

(2) In holding that the Commission's decision to grant the application must be supported by detailed findings of fact.

(3) In holding that the Commission must make findings of fact with respect to the competitive effect on respondent of the proposed operation of the new station before a permit for its construction may be granted.

(4) In holding that the Commission's decision to grant the applica[illegible]n was arbitrary and capricious because not suppor[illegible] by findings as to the probable competitive effect of the new station on the respondent's financial condition.

(5) In failing to dismiss the appeal.

(6) In setting aside the decision of the Commission granting the permit to build the new station.

(7) In remanding the case to the Commission with directions to make findings of fact on the question of what the competitive effect of the proposed operation of the new station would be on the financial condition of respondent.

SUMMARY OF ARGUMENT

The two principal issues in this case are whether respondent is a "person aggrieved or whose interests are adversely affected" by the granting of the permit, entitling it to seek review of the Commission's action under Section 402 (b) (2) of the Act, and whether the Commission was obligated to make findings of fact on the issue of whether the granting of the permit would inflict financial loss upon the respondent. Both of these issues may be resolved by determining whether, under the Act, the Commission, in passing upon an application for a construction permit for a new station, is under any duty to protect existing licensees from competition; if the Commission is not under any such duty, respondent, whose interests are affected

only by the threat of prospective competition, has no standing to seek review of the granting of the permit, and the Commission was not obligated to make findings of fact on the issue of financial injury to respondent.

1. There is no provision of the Act expressly stating whether or not the Commission is required to consider the question of competitive effect in granting a new license. Section 307 (a) merely states that the Commission shall grant a license "if the public convenience, interest, or necessity will be served thereby." Analysis of the Act demonstrates that financial loss to an existing licensee due to competition from a new station is not a factor which the Commission must consider in determining whether granting a license will serve the public interest.

The Act does not purport to confer upon the Commission jurisdiction over the business of radio station licensees. The purpose of the Act is to assure allocation in the public interest of the limited number of radio frequencies available; this purpose is achieved by prohibiting any use of radio transmitting equipment except under a license from the Commission. Once an applicant has been licensed to use a particular frequency, the statute contemplates that he shall have the right to operate his transmitting equipment in accordance with the terms of the license. But the Act confers on the

Commission no jurisdiction whatever over the business in connection with which the transmitting equipment is used. The licensee is free to carry on his business as he chooses and, if the public is to be protected from abuses which may result from such economic freedom, that protection must be found in the effects of competition. The decision below compels the Commission to prevent free competition and, at the same time, leaves it without statutory power to correct the abuses incident to unregulated monopoly.

Section 313 of the Act expressly declares that the antitrust laws shall be applicable to broadcasting and that the licenses of offenders may be revoked. It would be inconsistent for Congress to have empowered the Commission to revoke licenses for violation of laws designed to foster competition and at the same time to have required the Commission to encourage monopoly by denying competitors the opportunity to enter the field.

This conclusion is fortified by the fact that, under Section 309 (a), the Commission is not required to hold a hearing before granting a license. Plainly, if Congress had intended to give existing stations a legal right to be protected against competition, it would have provided for consideration of that right by the Commission.

There is nothing in the nature of the license held by an existing station which confers a right to protection from competition. Such a license is an authorization to operate radio transmitting equip-

ment and is in no sense a franchise to engage in any type of business. The rights granted by such a license are extremely limited and are restricted solely to the use of the facilities licensed for operation; they do not comprehend a right to engage in any business and, *a fortiori*, no right to be protected from business competition.

Every consideration of policy repels the suggestion that the Act should be construed as requiring the Commission to consider the issue of competitive effect. The basic theory upon which broadcast licenses have always been allocated is that competition is essential to the maintenance of high quality programs. This is because competition among stations for advertisers means competition among stations for listeners and this in turn means rivalry to present the highest quality programs. Thus the character of radio presentations, and therefore the public interest, is largely dependent on competition.

The Commission has never denied a license to one otherwise qualified on the ground that his competition may injuriously affect an existing licensee. If it be assumed that the language of the Act is sufficiently ambiguous to require interpretation, this administrative construction is entitled to weight.

2. If the Commission is under no duty to protect existing licensees from competition, it follows that respondent, whose interests are affected only by the threat of prospective competition, has no standing

to secure review of the Commission's order under Section 402 (b) (2). It is not enough that respondent may suffer financial loss through the grant of the permit; having no legal right to be free from competition and having no legal interest in the maintenance of its advertising revenues, it is not a person "aggrieved or whose interests are adversely affected" within the meaning of the statute.

Section 402 (b) (2) was not designed to abrogate the settled principle that only those who suffer a legal wrong or injury may seek judicial redress; it was plainly intended merely to make an expeditious remedy available to those persons who, in the absence of this provision, would be entitled to bring an original suit in a court of competent jurisdiction. Any other interpretation of Section 402 (b) (2) would be open to constitutional doubt.

3. Even apart from the jurisdictional question, the decision below must be reversed because it is based on the erroneous premise that the Commission was required to make findings with respect to the issue of the competitive effect of the Telegraph Herald station on respondent. Plainly if this issue is not one which the Commission was required to consider, it is not one with respect to which the Commission was obligated to make findings.

Moreover, even though it be held that the Commission was required to consider the issue of com-

petitive effect, it does not follow that the Commission was obligated to make findings with respect to this issue. The Act contains no provision for detailed subsidiary findings of fact, and the clear implication from the procedure prescribed for the consideration of applications is that no such findings are necessary. It may be presumed that Congress did not write such a provision into the Act because of the intolerable burden which would be imposed on the Commission if it were required to make detailed findings with respect to the thousands of applications which are filed each year, merely to facilitate litigation in the comparatively few cases in which appeals are taken.

There can be no contention that the constitutional requirement of due process makes detailed findings necessary, since any aggrieved person who is unable to secure adequate protection of his rights through the special remedy of direct appeal may institute an original suit in a court of competent jurisdiction. The requirement of due process does not extend further than affording persons who have suffered legal injury from an action of the Commission a right to contest that action in an appropriate judicial tribunal.

If the Commission's action may not be set aside because the Commission did not make detailed findings on the issue of competitive effect, the decision below must be reversed, even if the Commission was required to consider that issue.

The Commission found that the grant of the permit would serve the public interest, convenience, or necessity; that finding may be set aside only if the record demonstrates that it is clearly erroneous in view of the effect of the new station upon respondent's business. No such demonstration can be made.

ARGUMENT

The two principal issues in this case are whether respondent is a "person aggrieved or whose interests are adversely affected" by the granting of the permit, entitling it to seek review of the Commission's decision under Section 402 (b) (2) of the Communications Act, and whether the Commission was obligated to make findings of fact on the issue of whether the granting of the permit would inflict financial loss upon the respondent. Both of these issues may be resolved by the determination of a single question of statutory construction: whether, under the Communications Act, the Commission, in passing upon an application for a construction permit for a new broadcast station, is under any duty to protect existing licensees from competition. We shall contend (1) that the Act imposes no such duty upon the Commission; (2) that respondent, whose interests are affected only by the threat of prospective competition, has no standing to seek review of the granting of the permit; and (3) that, irrespective of the jurisdictional question, the Commission, not being required to consider the

prospective competitive effect of the new station upon existing stations, was not required to make findings of fact on this issue.

If we are in error in these contentions, a second question of statutory construction is presented: whether the Act, expressly or by implication, requires the Commission to make detailed subsidiary findings of fact in support of its ultimate finding that the public interest, convenience, or necessity will be served by granting the application. On this issue we shall contend that the Act contains no such requirement and that a decision of the Commission granting a permit may not be set aside as arbitrary and capricious because of the absence of such findings.

I

UNDER THE COMMUNICATIONS ACT OF 1934, THE COMMISSION, IN PASSING UPON AN APPLICATION FOR A CONSTRUCTION PERMIT FOR A NEW BROADCAST STATION, IS UNDER NO DUTY TO PROTECT EXISTING LICENSEES FROM COMPETITION

There is no provision in the Communications Act expressly dealing with the question of whether the Commission must, in passing upon an application for authority to construct and operate radio transmitting equipment, consider the prospective competitive effect of the new station upon existing licensees. The standard prescribed by Congress to govern the Commission in its consid-

eration of such an application is found in Section 307 (a), which provides:

> The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

Plainly this section, considered entirely by itself, furnishes no standard of action for the Commission to follow. The content of the standard, as this Court has held, is supplied by considerations relating to the context of the Act as a whole, the nature of radio transmission and reception, the scope, character and quality of services, and the advantages which will be enjoyed by the public by the licensing of a station. *Radio Comm'n* v. *Nelson Bros.*, 289 U. S. 266, 285. The answer to the question here at issue, therefore, must be sought by ascertaining the underlying purpose of the Act and by analyzing the specific provisions by which that purpose is sought to be achieved.

This analysis will demonstrate that the Act does not provide for federal regulation of the business affairs of radio station licensees. This being so, it follows that a licensee acquires no right under the Act to protection from competition and, therefore, has no legal standing to question the validity of a license issued to a competitor, and further, that the Commission, in passing upon applications for licenses, is under no duty to consider the com-

petitive effect of a new station upon an existing licensee.

1. The Communications Act is not designed to regulate the manner in which any business (other than the business of common carriers in the public telephone and telegraph fields [*]) shall be conducted. The essential purpose of the Act is to secure to the public the maximum benefit from the use of available radio frequencies. The number of available radio frequencies is quite limited. In the absence of some authority empowered to allocate these frequencies and to regulate the use of radio transmitting equipment, chaotic conditions would result which would prevent effective use of radio facilities by anyone. Congress, recognizing this fact, has provided through the Communications Act for the allocation and regulation of the use of radio frequencies, by prohibiting any use of radio transmitting equipment except under a license from the Communications Commission.

It is significant that the statute makes no distinction between a radio broadcast station, such as that operated by respondent, and any other type of radio station. The Act provides precisely the same procedure to be followed by the Commission and the same standards to be applied by the Commis-

[*] Section 3 (h) of the Act provides that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." Such a person, therefore, does not come under any of the provisions of the Act which are designed to regulate the conduct of the business of common carriers in the communications field.

sion in licensing a radio station for broadcast purposes as it does for licensing amateur stations, police stations, or any other of the many different types of radio stations.[4] Whether the radio frequency assigned to a particular applicant is used in connection with the business of selling adver-

[4] There are some 38 different classes of radio stations licensed by the Commission and bands of frequencies, or specific frequencies within bands, have been assigned for the exclusive use of each class. A list of the classes of stations with an indication of the frequency assignment to each follows:

Standard broadcast stations—550 to 1,600 kc.

Relay broadcast stations—various specific frequencies in the band 1,620 to 2,830 kc.; certain frequencies above 30,000 kc.

International broadcast stations—various specific frequencies in the 6,000, 9,000, 15,000 and other bands.

Television—frequencies in the band 44,000 to 50,000 kc.; and others.

Facsimile broadcast stations—various specific frequencies in the bands 25,000 kc., 43,600 kc., and above.

High frequency broadcast stations—frequencies in the bands 25,000, 42,000, and above.

Noncommercial educational broadcast stations—frequencies in the band 41,000 kc.

Developmental broadcast stations—specific frequencies in bands ranging from 1,614 to 400,000 kc.

Fixed public point-to-point telegraph stations—specific frequencies in the band 18,000 to 20,000 kc., and other frequencies.

Fixed public point-to-point telephone stations—specific frequencies in the bands 18,000 to 20,000 kc. and other frequencies.

Agriculture stations—specific frequencies 18,000 to 20,000 and other frequencies.

Fixed public press stations—frequencies in the bands 18,000 to 20,000 and other frequencies.

tising, or in connection with an educational or charitable institution, or in connection with the

Public coastal telegraph stations Private coastal telegraph stations Marine relay stations Maritime mobile stations	various specific frequencies in the band 105 to 22,650 kc.
Public coastal telephone stations Private coastal telephone stations	frequencies in the bands 4,477.5 to 22,700 kc.

Coastal harbor stations—specific frequencies in the bands 2,506 to 137,160 kc.

Aeronautical stations—various specific frequencies in bands ranging from 2,612 to 143,460 kc.

Airport control stations—frequencies in the band 130,860 to 140,100.

Flying school stations—frequencies in the band 33,420 to 39,060 kc.

Instrument landing stations—specific frequencies between 93,500 to 110,300 kc.

Radio marker stations—the frequency 75,000 kc.

Aircraft stations—specific frequencies between 333 kc. and 6,210 kc. and others.

Municipal police stations—specific frequencies between 1,610 and 2,490; and between 30,580 and 39,900.

State police stations Interzone police stations and Zone police stations.	frequencies between 2,036 and 5,195 kc.

Marine fire stations—the frequency 1,630 and others.

Special emergency stations—the frequency 2,726 and others.

Forestry stations—2,212 kc. and other frequencies.

Geological stations—frequencies between 1,602 and 1,700 and others.

Mobile press stations—various frequencies between 4,705 and 22,225 kc.

Relay press stations—various frequencies from 30,860 to 39,980 kc.

Motion picture stations—the frequency 1,652 kc. and others.

Provisional stations—31,020 kc. and other frequencies.

Amateur stations—the bands 1,716 to 2,000 kc.; 3,500 to 4,000 kc.; and others.

operation of an amateur station, or for the protection of life and property, or for any other of the multitudinous uses to which radio-transmitting equipment may be put, the scope of the Commission's jurisdiction over the holder of the license is the same. Thus the Commission has no greater power to regulate the activities of respondent's broadcast station than it has to regulate the business of persons operating seagoing vessels, or of persons operating as common carriers by airplane, although both the vessels and the airplanes are required to be equipped with radio-transmitting equipment which must be licensed by the Commission, or than it has to regulate the business of manufacturers of radio-transmitting equipment, although such manufacturers are required to secure a license if they operate such equipment for testing and experimental purposes.

In performing its duty of licensing the use of radio-transmitting equipment, the Commission is chiefly concerned with having the available frequencies put to the most beneficial use from the standpoint of the public. So long as frequencies are available within a particular area, the public interest demands that any qualified person should have the opportunity to use them. However, the demand is usually far greater than the supply of available frequencies. Consequently, the Commission is faced with the task of selecting licensees who are best qualified to serve the public and of

204443—40——4

assigning to those licensees frequencies the use of which will not unduly interfere with reception from stations licensed to operate on the same or other frequencies. Once an applicant has been approved by the Commission and has been licensed to use a particular frequency, the statute contemplates that the licensee shall be permitted to operate his transmitter on that frequency for the period of the license. If a subsequent applicant should apply for a license to use a frequency which would create electrical interference with the reception of an existing station, the Commission would clearly be required to consider this factor in acting upon the application. But consideration of the effect of the new station upon the service rendered by an existing station and of the comparative advantages of the two stations is required under the Act, not for the purpose of safeguarding any vested right of the existing licensee, but rather to insure the best possible use of the radio spectrum for the benefit of the public.

There is an essential difference between the present statute and legislation such as the Interstate Commerce Act which regulates the manner in which a public utility shall be operated. In the regulation of railroads Congress has taken over control of the rates and charges which may

---

[3] See also the Oklahoma statute relating to the business of ginning cotton (Oklahoma Compiled Statutes 1921, §§ 3712-3718), analyzed by this Court in *Frost* v. *Corporation Commission*, 278 U. S. 515.

be collected and has otherwise assumed authority to prescribe the manner in which the business shall be conducted. The Transportation Act of 1920 was designed to effectuate that control for the primary purpose of assuring the public an adequate and efficient transportation system. As this Court said in *Texas & Pac. Ry.* v. *Gulf, etc., Ry.*, 270 U. S. 266, 277:

> By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss.

In other words, in the case of the railroads there has been a substitution of governmental regulation for competition as a means of protecting the public. Having undertaken the function of complete regulation of the railroads in the public interest, it is obvious that the correlative duty rests upon the regulatory body not to exercise its author-

ity in a manner that will defeat the public interest by impairing the economic existence of the roads. This principle underlies the decisions of this Court under the Transportation Act of 1920 (c. 91, 41 Stat. 456) and the Emergency Railroad Transportation Act of 1933 (c. 91, 48 Stat. 211) permitting competitors to bring suit to enjoin the establishment of new competitive facilities. *Tex. & Pac. Ry.* v. *Gulf, etc., Ry.*, 270 U. S. 266; *St. Louis Southwestern Railway Co.* v. *Missouri Pacific Railroad Co.*, 289 U. S. 76; the *Chicago Junction Case*, 264 U. S. 258; *cf. Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U. S. 382, 390.

The Communications Act presents an entirely different situation. There is not a single provision in the Act from which it can be inferred that Congress intended by providing a licensing procedure for the use of radio transmitting equipment to subject to regulation the business of the licensee, whether it be the advertising business or any other type of business in connection with which the radio-transmitting equipment is used.[6] Section 3 (h) of the Act expressly provides that "a person engaged

[6] The only reference in the Act to commercial operation of a broadcast station is found in Section 317, which contains a prohibition against broadcasting matter for which any valuable consideration is directly or indirectly paid or promised to the broadcast station from any person without announcing that it is paid for by such person. This provision is similar to the requirement under the postal laws that advertising must be marked as such in publications afforded second-class mailing privileges. 37 Stat. 554; 39 U. S. C. § 234.

in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." The Commission is not authorized to regulate the business of selling radio advertising or any other commercial use of radio frequencies; it is not authorized to regulate the rates for radio service or to limit the return upon the investment in radio broadcast stations. It has no authority, insofar as licensees of broadcast stations are concerned, which corresponds to its power over telephone and telegraph common carriers, to prescribe a uniform system of accounts, to require a certificate of public convenience and necessity before the licensee may engage in any business or extend his business, or to require the approval of the holding by any person of two or more positions of officer or director in more than one licensee corporation. All of these matters are outside the jurisdiction of the Commission, and if the public is to be protected from the abuses which may result from such economic freedom, that protection must be found in the effects of competition.[7] The decision below compels the Commission to prevent free competition notwithstanding the fact that there is no provision of the Act directed to the prevention of the abuses which are the concomitants of unregulated monopoly.

---

[7] The Commission refers all complaints alleging "unfair" competition among radio broadcast stations to the Federal Trade Commission, consistent with its position that it has no jurisdiction over the business affairs or commercial aspects of a station's operation.

The fundamental consideration which the court below disregarded is that the status of respondent as a licensee authorized to use radio transmitting facilities is not changed because it is also engaged in the advertising business. In the conduct of its advertising business, it clearly has no right to freedom from competition from anyone else furnishing an advertising medium, whether it be a newspaper, a magazine, or another broadcast station. For example, insofar as this business is concerned, respondent has no more right to be protected from competition by the Telegraph Herald as a radio station than Telegraph Herald, as a newspaper, has a right to be protected from competition by the respondent either as a radio station or if it should propose to enter the newspaper field. As a licensee authorized to use radio transmitting facilities, respondent has a right to protection from undue interference in the operation of its equipment. But the important fact is that the injury with which respondent claims to be threatened here is loss of its advertising revenues and not invasion of its right to use its transmitting facilities.* This is injury with which, under the Act, the Commission is not required to concern itself.

---

*It is conceded that the authorization to the Telegraph Herald to construct and operate a station in Dubuque, Iowa, will in no way interfere with the use by the respondent of the facilities which it is licensed to operate or with the reception by listeners of the programs which it presents.

2. Aside from the clear implications of the statute, the Act expressly provides for the maintenance of competitive conditions in radio broadcasting. Section 313 of the Act declares that the antitrust laws shall be fully applicable "to interstate or foreign radio communication," and that the licenses of offenders may be revoked. It is hardly conceivable that Congress would empower the Commission to revoke licenses for violations of laws designed to foster competition and, at the same time, require the Commission to foster monopolies by denying competitors the opportunity to enter the field. Furthermore, the express reference to the antitrust laws is plainly an affirmance and adoption of the public policy declared in those acts.[9] The view that the Commission should foster monopolistic conditions in the industry by protecting existing stations from competition is repugnant to that public policy; in the absence of unequivocal language compelling such an inconsistency, it should plainly be avoided.

3. This conclusion is fortified by the provisions of the Act relating to the procedure for granting

---

[9] The legislative history of the Communications Act of 1934 is not only barren of any suggestion that the radio broadcast industry was intended to be exempt from the usual forces of competition, but affirmatively shows that Congress was fully cognizant of the distinction between the regulated monopoly in the telephone and telegraph field, provided by Title II, and the competitive economy for the radio broadcast industry expressly written into Section 313 of Title III. See S. Rep. 781, 73d Cong., 2d Sess., pp. 2, 8; H. Rep. 1918, 73d Cong., 2d Sess., pp. 25, 46-47.

and refusing applications for a license. Under Section 309 (a), the Commission is authorized and required to hold a hearing upon an application for a license only if, upon examination of the application, it is unable to determine that the public interest, convenience or necessity will be served by granting the license. In other words, the Act guards only the right of the applicant to protest the denial of a license; it does not grant to any competitor, even if threatened with possible financial loss, the right to protest the grant of a license to another. If Congress had intended to give existing stations a legal right to be protected against competition, it would undoubtedly have provided expressly for consideration of that right by the Commission.

4. There is nothing in the nature of the license held by an existing station which confers, expressly or by implication, a right to protection from competition. Such a license is an authorization to operate radio-transmitting equipment and is in no sense a franchise to engage in any type of business. The rights conferred by the license are neither absolute nor exclusive. The maximum term of a standard broadcast license under the Act is three years (Section 307 (d)), but the Commission by regulation has fixed the term at one year (F. C. C. Rules and Regulations § 3.34; 4 Federal Register 2717). The license confers no property right in the frequency authorized to be used. Section 309 (b) (1) expressly provides that a "station license

shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein." Section 301 declares that the purpose of the Act, among other things, is to provide for the use of the channels of interstate and foreign radio transmission, but not the ownership thereof, for limited periods of time under licenses granted by the Commission. The license may not be transferred or assigned without the written consent of the Commission (Section 310 (b)). The license may be modified by the Commission on its own motion if such action will promote the public interest, convenience, and necessity (Section 312 (b)). And applicants for licenses under the Act are required to sign a "waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise" (Section 304).

It is clear, therefore, that the rights which are granted by the license are restricted solely to the use of the facilities licensed for operation. There is no difference between the rights conferred by a license to operate a radio broadcast station and the rights conferred by a license to operate any other of the 38 or more types of radio stations (see note, p. 19, *supra*). All of these licenses confer the right to operate radio transmitting equipment; none of them purports to confer a right to engage

in or carry on any business or, *a fortiori*, to be protected from business competition. *Cf. Charles River Bridge* v. *The Warren Bridge*, 11 Pet. 420; *Railroad Co.* v. *Ellerman*, 105 U. S. 166, 173–174; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 483; *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118.

5. Every consideration of policy repels the suggestion that the Act should be construed as conferring any right upon the licensee of a radio broadcast station to protection from competition. As was pointed out by the Chairman of the Federal Radio Commission in an early report to Congress (Sen. Doc. 137, 72d Cong., 1st Sess., p. 36), competition is essential to the maintenance of high quality radio programs. The report reveals that the financial success of a commercially operated broadcast station depends on its ability to sell advertising which, in turn, depends on its ability to attract listeners. This necessarily means rivalry among stations to improve the character and quality of their programs. Thus the quality of programs, and therefore the public interest, is largely dependent on competition.[10] The report denominates

[10] A recent expression of the Commission in *In re Spartanburg Advertising Company*, Docket No. 5451, Decision and Order on Petition for Rehearing, decided January 10, 1940, illustrates precisely how this result is brought about:

"* * * The basis for petitioner's opposition to the grant of the application was, and is, that the competition which will result from the operation of a second station in Spartanburg will adversely affect petitioner's ability to operate its

these principles as the American system of broadcasting and they represent the basic theory upon which radio licenses have always been allocated.

station in the public interest. Petitioner, in substance, asserts a right to be the only station in Spartanburg. Neither the license now enjoyed by petitioner nor any provision of the Communications Act of 1934 confers upon petitioner a monopoly of the radiobroadcast facilities in the community which it is now serving. In the radiobroadcast field public interest, convenience, and necessity is served not by the establishment and protection of monopolies, but by the widest possible utilization of broadcast facilities. Competition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers which means competition for listeners necessarily results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which necessarily results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting.

* * * * * *

* * * As pointed out above, competition in radiobroadcasting means, in so far as listeners are concerned in a particular community, a wider choice of programs, and consequently a heightened listener interest which may very well result in a greater amount of advertising expenditures because of increased listener hours with consequent increased revenues for both stations. Experience has shown that the addition of a competitive station in a community does not bring about the disastrous results sometimes predicted by the licensee of an existing station in the community. More often the protests of the existing station to the establishment of a new station spring not from a desire to insure its continued operation in the public interest, but rather from the purely private interest of seeking a monopoly in a field in which the interests of the public are best served by competitive operation. In the instant case we find no interest of petitioner will be adversely affected by the estab-

Under this system it is assumed that a new station in a community could not take advertising clients away from an existing licensee (thereby perhaps impairing his ability to continue to operate in the public interest) without at the same time rendering a superior service to the public.

Less fundamental, but almost equally important from a practical standpoint, is the tremendous burden which would be placed on the Commission if it were required to determine in every case the economic effect of competition on existing stations. In fact, it is difficult to perceive how the Commission could possibly resolve the questions which would be presented. For example, it is difficult to see how the Commission could determine the effect of competition without at the same time determining what the rates for service should be. Nor could the effect of competition be judged without determining the relative quality of the programs. Obviously, many other equally insoluble issues would be involved.

The decision of the court below, if sustained, would have another very far-reaching effect upon the work of the Commission. Section 307 (d) of the Act requires that applications for renewal be "governed by the same considerations and practice which affect the granting of original applications."

---

lishment of a second station in Spartanburg. Upon the record we are satisfied that the effect of the establishment of a second station in this community will be to serve public interest, convenience, and necessity."

Under the decision below, the Commission, not only in licensing new stations but also in passing upon applications for renewals, would have to give consideration to the effect which the operation of one station will have, or is having, upon the ability of other existing licensees to operate their stations in the public interest. Lacking statutory authority to allocate customers, regulate rates, or require the sharing of profits, the Commission would either have to assume such authority or refuse renewal to any successful operator whose competition was unduly effective against other existing stations. Indeed, the greater the ability of an applicant for a license to attract advertising clients, the more imperative would be the duty of the Commission to deny the application.

Moreover, the Commission would be required to consider competition not only between two or more commercial broadcast stations, but also competition between a commercial broadcast station and stations rendering other types of service, as, for example, a broadcast station operated by a religious organization, or an experimental television station. Such a station, by attracting part of the listening public which would otherwise tune in on programs presented by the commercial station, might inflict serious financial loss on the commercial station. Under the decision below, the Commission would be required to consider the effect of this loss in determining whether to grant or renew a license to

the religious organization, or the operator of the television station.

6. Respondent's contention as to the meaning of the Act is also contrary to the administrative interpretation placed on the statute. The Communications Commission, its predecessor, the Federal Radio Commission, and prior thereto, the Secretary of Commerce, have never denied a license to one otherwise qualified on the ground that his competition may injuriously affect an existing licensee. If it is to be assumed that the language of the Act is sufficiently ambiguous to require interpretation, this administrative construction is entitled to great weight. *United States* v. *Chicago North Shore R. Co.*, 288 U. S. 1, 13–14; *Hewitt* v. *Schultz*, 180 U. S. 139, 156–157; *Costanzo* v. *Tillinghast*, 287 U. S. 341, 345. The weight to be attributed to the administrative construction is even greater where, as here, Congress has reenacted without change the provisions of the statute which have received the administrative interpretation. *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492–493; *Costanzo* v. *Tillinghast*, 287 U. S. 341, 345; *United States* v. *Moore*, 95 U. S. 760, 763; *Brewster* v. *Gage*, 280 U. S. 327, 336–337.

In its brief filed in opposition to the petition for certiorari, respondent argued that the interpretation placed upon the Act by certain Commission decisions supports respondent's view as to the meaning of the statute. An analysis of the decisions cited to support this argument shows that

respondent has misunderstood the nature of the Commission's action. For example, in the *Fall River Herald News Publishing Co.* case, 5 F. C. C. 377, 382, cited by respondent, an application for a license was denied, not because of threatened competition to existing licensees, but because the Commission believed that the applicant would not be able to secure sufficient commercial support to sustain its proposed operation. The issue of the financial ability of the applicant to conduct the proposed operation is one which the Commission is specifically required to consider by Section 319 (a) of the Act. In the *R. R. Jackman* case, 5 F. C. C. 496, 500, the Commission denied an application for the transfer of a license to the licensee of another station serving the same area on the ground that the transfer would substantially reduce competition in the area. Although in its decision the Commission mentioned the competitive disadvantage which would be inflicted upon another licensee, it is clear from the context of this remark that the decisive factor was the threatened reduction in competition which would result if the proposed transferee were licensed to operate two theretofore competing stations. The action of the Commission in considering whether an applicant can expect sufficient commercial support to sustain his operation and in determining that an application for a transfer should be denied when it will materially reduce competition cannot fairly be regarded as adoption

of the view that an existing licensee is entitled to be protected against injurious competition.

The respondent also refers to a number of cases in which the Commission has permitted existing licensees to participate in hearings upon applications and to introduce evidence with respect to the economic effect of granting additional licenses. These cases are not necessarily indicative of the Commission's views as to the scope of its power in granting licenses. Doubtless in many instances the evidence introduced was relevant to the question of whether the applicant would be financially able to sustain the proposed operation. In any event the decisive fact is the action of the Commission in passing upon applications for licenses and not the conduct of administrative proceedings or the rigidity with which the Commission has applied tests as to the relevancy of the evidence introduced in those proceedings. The fact is that the Commission has never denied an application for a license on the ground that the competition of the applicant would injuriously affect existing licensees. If extrinsic aids to interpretation are necessary, this settled administrative construction should be given weight.[11]

[11] In its brief in opposition to the petition for certiorari respondent refers to a statement made in the Commission's brief submitted in the court below in support of the petition for a rehearing. That statement was:

"The Commission is entirely in accord with the view that if the effect of granting a new license would be to defeat the

II

RESPONDENT, AS A PERSON WHO IS AGGRIEVED OR WHOSE INTERESTS ARE AFFECTED ONLY BY THE THREAT OF PROSPECTIVE COMPETITION, HAS NO STANDING TO SEEK REVIEW OF THE COMMISSION'S DECISION

If we are right in our contention that the Commission owes no duty to existing licensees to protect them from competition, it follows, we submit, that respondent, whose interests are affected only by the threat of prospective competition, has no standing to secure review of the Commission's order.

The relevant statutory provision is Section 402 (b), which provides:

> An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the

---

ability of the holder of an outstanding license to carry on in the public interest, the application for the new station should be denied unless there are 'overweening reasons' of a public nature for granting it."

This statement is a paraphrase of a statement previously made by the Court of Appeals for the District of Columbia in *Great Western Broadcasting Ass'n, Inc.* v. *Federal Communications Commission*, 94 F. (2d) 244, 248, and quoted in its opinion in this case (R. 473). The Commission does not now contend, concede, or admit that this statement, construed as requiring the Commission to hold that competition between stations for advertising revenue is not in the public interest, is a proper interpretation of the Commission's duties under the Communications Act of 1934. Whatever effect the statement may have, it cannot override the provisions of the Act or the consistent administrative interpretation which the Commission has followed in enforcing the Act.

> District of Columbia in any of the following cases:
>
> (1) By any applicant for a construction permit for a radio station * * * whose application is refused by the Commission.
>
> (2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

This section is plainly remedial in character. It makes an expeditious remedy available to those persons who, in the absence of this provision, would be entitled to bring an original suit in a court of competent jurisdiction; that is, those who suffer legal aggrievement or whose legal interests are affected by the Commission's action. *United States* v. *Merchants & Manufacturers Traffic Ass'n.*, 242 U. S. 178, 188; *Edward Hines Trustees* v. *United States*, 263 U. S. 143, 148; *Sprunt & Son* v. *United States*, 281 U. S. 249, 256–257. There is no intimation in the statute, nor is there any warrant for inferring, that Section 402 (b) (2) was intended to abrogate the settled principle of law that one may complain in a judicial tribunal only of the invasion of some legal or equitable right, as distinguished from mere financial loss. The principle of *damnum absque injuria* applies: if no legal right of respondent has been violated, it has no judicial remedy by appeal under Section 402 (b) (2), or otherwise, to prevent prospective financial damage from competition by Telegraph Herald. *Railroad*

Co. v. *Ellerman*, 105 U. S. 166, 173; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 479–483, and cases cited; *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118, 139–140.

The opposite view expressed by the court below in this case, and later expanded in *Yankee Network, Inc.* v. *Federal Communications Commission*, 107 F. (2d) 212, makes the provisions of Section 402 (b) (2) vague and uncertain in meaning, leaving to speculation what kind of "aggrievement" or "interest" may be protected by appeal. Moreover, if this section be construed as permitting an appeal by one who has suffered no invasion of a legal right, its validity would be questionable under the doctrine that the constitutional power of the federal courts extends only to the decision of a "case or controversy." An appeal, taken under Section 402 (b) (2) by any person not having a legal right claimed to be invaded by Commission action would be no more than a request for an advisory opinion by the court below. Even if the Congress could constitutionally authorize the court below to render advisory opinions, as to which there is substantial doubt,[12] Congress certainly did not in-

[12] The courts of the District of Columbia, after the decision in *O'Donoghue* v. *United States*, 289 U. S. 516, must be taken to serve as Article III courts as well as courts created for the government of the District of Columbia. The constitutional objection to vesting federal, executive, or legislative functions in a court exercising the judicial power defined by Article III rests on the doctrine of separation of powers. If *federal* executive or legislative functions were given to the District of Columbia courts, which also exercise the Article

tend to do so by Section 402 (b) (2). As this Court pointed out in *Radio Comm'n* v. *Nelson Bros.*, 289 U. S. 266, 276, the primary purpose of Congress in amending in 1930 [13] Section 16 of the Radio Act of 1927—which as so amended was reenacted without any changes here material as Section 402 (b) of the Communications Act—was to provide for review of decisions of the court below by this Court.[14] It does not need argument to demonstrate that the purpose of Congress could not be achieved if the court below were authorized to render advisory opinions, since this Court will neither render nor review advisory opinions. *Muskrat* v. *United States*, 219 U. S. 346.

It is consequently immaterial to respondent's standing to appeal under Section 402 (b) (2) that it may suffer financial loss through granting of a permit to the Telegraph Herald; unless it has a legal right to be free from competition or a legal interest in the maintenance of its advertising reve-

---

III judicial function, a commingling of executive or legislative with judicial governmental powers would result. The policy of the prohibition against placing any two of these functions in the same hands would cast doubt on the constitutionality of any attempt to achieve this result. There would, on the other hand, be no such objection to adding *District of Columbia* executive or legislative powers, which would involve no coalescence of federal powers into the hands of a single body. Under this view, supported more by logic than by precedent, the *O'Donoghue* case served to overrule dicta in *Postum Cereal Co.* v. *Calif. Fig Nut Co.*, 272 U. S. 693, and *Radio Commission* v. *General Electric Co.*, 281 U. S. 464.

[13] 46 Stat. 844.

[14] See H. Rep. No. 1665, S. Rep. No. 1195, 71st Cong., 2d Sess.

nues, it is not "a person aggrieved or whose interests are adversely affected" within the meaning of the statute. That the respondent has no such legal right or interest is manifest from the considerations adverted to in the preceding section of this brief. As a licensee authorized to use radio transmitting equipment, respondent has the right only to the use of the frequency assigned to it; its license confers on it no franchise to carry on any business, much less to be protected from competition in the conduct of its business (pp. 28–30, *supra*). Consequently, the mere fact that respondent, in connection with its business, operates radio-transmitting equipment under license from the Commission gives it no legal right or interest which it does not otherwise possess to question the validity of competition by the Telegraph Herald. And clearly, as a person engaged in the advertising business, respondent has no such legal right or interest. No person engaged in furnishing an advertising medium, whether it be through the sale of newspaper or periodical space or of radio time, may question a competitor's right to engage in that business. The legality of the permit issued to the Telegraph Herald to operate transmitting equipment may no more be questioned by respondent as a competitor in the advertising business than a power company could question the legality of a loan to competing companies, essential to enable them to engage in the electric power business (*Alabama Power Co.* v. *Ickes*, *supra*); or than a wharfinger could question

the legality of a lease of a dock to a competitor which was essential in the operation of the competitor's business (*Railroad Co. v. Ellerman, supra*); or than the holder of a license from the Federal Power Commission could question the legality of a similar license issued to a competitor to construct and operate a hydro-electric project (*Carolina Power and Light Co. v. South Carolina Public Service Authority*, 94 F. (2d) 520, certiorari denied, 304 U. S. 578).[15]

This case is essentially different from *Frost v. Corporation Commission*, 278 U. S. 515, which involved an Oklahoma statute declaring the business of operating cotton gins to be a public utility and subjecting it to plenary regulation with respect to rates, charges and service. The Court recognized that under this statute a license to operate a cotton gin as a public utility was "a franchise, granted by

[15] On May 15, 1933, the respondent filed in the court below a brief as intervenor in the case of *The Telegraph Herald v. Federal Radio Commission*, 66 F. (2d) 220, an appeal taken by the Telegraph Herald from the grant by the Radio Commission of a modification of respondent's license authorizing it to move its station from Joliet to East Dubuque, Ill. In this brief, respondent successfully contended that the Telegraph Herald had no standing to maintain an appeal because it had failed to establish any legal right entitled to judicial recognition and it was not, therefore, a "person aggrieved or whose interests are adversely affected" within the meaning of Section 16 of the Radio Act. Respondent contended that Telegraph Herald had no legal right to contest the grant of a license to it either as a prospective applicant for a radio station license or as one "claiming protection for its newspaper interests." (Br., p. 5.)

the state in consideration of the performance of a public service; and as such it constitutes a property right * * *." 278 U. S. at 520. The owner of the franchise was therefore held to be entitled to resort to a court of equity to restrain illegal operation of a cotton gin "upon the ground that such operation is an injurious invasion of his property rights." 278 U. S. at 521.

All of the factors considered determinative by the Court in the *Frost* case are absent here. A licensee authorized to operate radio transmitting equipment is expressly declared *not* to be a common carrier (Section 3 (h)); the business which the licensee conducts is subject to no regulation by the Commission (pp. 18–25, *supra*); and the license cannot possibly be construed as a franchise to carry on any business whatever (pp. 28–30, *supra*).

Respondent may urge that Section 402 (b) (2) *creates* a limited right in an existing station to be free from competition from new stations unlawfully licensed by the Commission. But since, as we have pointed out, the substantive provisions of the Act confer upon an existing licensee no right whatever to be protected from competition, and since the Commission is not even required to hear the protest of such a licensee against the grant of a permit to a competitor (p. 28, *supra*), it would be anomalous indeed if the review provisions of the statute were intended to create the right otherwise denied.

It is to be noted, too, that if the Commission should, under Section 312 (b) of the Act, modify

a license on its own motion, instead of modifying it upon application under Section 309 (a) (as respondent's license was modified, for example, to permit it to move from Joliet, Ill., to East Dubuque), a licensee threatened with financial loss by this action of the Commission could not appeal under Section 402 (b) (2) but could seek judicial relief only in a proceeding under Section 402 (a), which adopts the procedure prescribed by the Urgent Deficiencies Act. Obviously such a suit could be maintained only if the complainant established that the action of the Commission invaded a legal right conferred upon him by common law or by the substantive provisions of the Act (*United States* v. *Merchants & Manufacturers Traffic Ass'n, supra; Edward Hines Trustees* v. *United States, supra; Sprunt & Son* v. *United States, supra*); the provisions of Section 402 (b) (2) would be inapplicable and could not, therefore, be resorted to in order to find a legal interest in the complainant. If Section 402 (b) (2) be construed as *creating* a legal right in a complainant proceeding under that section, it would mean that Congress gave an existing licensee a standing to complain of an order of the Commission, if entered pursuant to an application, but no standing to complain of an order of the Commission, causing precisely the same financial damage, if entered on the Commission's own motion. Such caprice should plainly not be imputed to Congress.

Similarly, if Telegraph Herald commenced operation without a license, respondent could seek

judicial redress only by resort to a court of general equity jurisdiction. In such a suit, again, it obviously could not avail itself of the provisions of Section 402 (b) (2) to establish a legal right invaded by the Telegraph Herald's unlawful competition. There is no reason to presume that Congress intended to give an existing licensee any greater right to complain of competition from a station operated under a license invalidly issued than it has to complain of competition from a station operated entirely without license.

Moreover, the practical aspects of the decision below are such as to repel the suggestion that Congress designed the statute to grant a right of appeal to one whose interests are affected only by the threat of competition from a new station. Such a rule would mean, logically, that almost every person holding a radio broadcast license, as well as many persons not operating radio-transmitting equipment at all, could seek such review simply because they might suffer financial loss. There is intensive competition among radio stations, even though not located in the same community, for nonlocal advertising, particularly for so-called "national spot" advertising. This is advertising placed on radio stations by national advertisers who allocate their radio advertising expenditures not only on the basis of the popularity of the stations in a given community, but also on the basis of the relative returns expected from

different communities.[16] Clearly, therefore, the grant of a license to a new station in one locality may result in financial loss to existing stations in other localities, giving them, under the ruling below, a standing to seek appeal. Moreover, any new station which serves as an advertising medium will be in direct competition with persons furnishing other types of advertising media: newspapers, magazines, billboards, etc.[17] The operation of the new station may well inflict serious financial loss upon competitors such as these, yet it is hardly possible that Congress intended to give them, for that reason, a right to appeal from the Commission's grant of the permit.

It is manifest, therefore, that Section 402 (b) was designed only for the remedial purpose of granting an expeditious appeal to those whose legal rights are invaded, and that since no legal right of respondent has been violated, the Court of Appeals was without jurisdiction to entertain the appeal.

---

[16] In 1938 this form of advertising produced $28,000,000 out of $73,000,000, or 38½ percent, of the broadcast revenue of 660 stations. F. C. C. Release No. 34845, issued June 28, 1939.

[17] More money is spent in radio advertising than in any other advertising medium with the single exception of the newspapers. The radio broadcast industry has achieved this position only after intense competition with persons furnishing the other advertising media. In 1938 it had 20 percent of the total advertising volume as compared with 2 percent of the total in 1928. Printers Ink, June 16, 1938, pp. 19–22; Printers Ink, March, 1939, p. 18

III

THE COMMISSION WAS NOT REQUIRED TO MAKE FINDINGS WITH RESPECT TO THE COMPETITIVE EFFECT OF GRANTING THE PERMIT UPON EXISTING LICENSEES

1. If our position is sound that the Commission has no duty under the Act to protect existing stations from competition, the decision below must be reversed, even apart from the jurisdictional question. The sole ground upon which the court below set aside the order of the Commission and remanded the case was the failure of the Commission to make findings on the issue of competitive effect. It needs no argument to demonstrate that if this issue is not one which the Commission was required to consider, it is not one with respect to which the Commission was obligated to make findings.

2. Moreover, the decision of the court below is erroneous even though it be held that the Commission was required to consider the issue of competitive effect and that the respondent had standing to appeal. As stated above, the sole ground upon which the court below reversed the order of the Commission was because the Commission failed to make findings with respect to the issue of competitive effect. The court did not hold, and we believe on the record here could not have held (p. 54, *infra*), that the grant of the permit to the Telegraph Herald was not in the public interest, even though the competitive effect of the new station upon respondent's business were considered.

The court's decision can be sustained, therefore, only if its fundamental postulate is sound—namely, that the Act requires the Commission, in granting an application for a license, to make detailed subsidiary findings of fact in support of its ultimate finding that granting the license will serve the public interest, convenience, or necessity. The court below, in several cases involving denials of licenses, has taken the position that the Act does contain this requirement. *Missouri Broadcasting Corp.* v. *Federal Communications Commission*, 94 F. (2d) 623, certiorari denied, 303 U. S. 655; *Heitmeyer* v. *Federal Communications Commission*, 95 F. (2d) 91; *Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 96 F. (2d) 554, certiorari denied, 305 U. S. 613. We believe, however, that analysis of the statute demonstrates that these decisions are erroneous, at least if applied to cases involving the granting of a license.

The Act is explicit in prescribing the procedure to be followed by the Commission in granting or denying a license. Section 309 (a) provides in substance that if the Commission is able to determine, upon examination of an application for a license, that the public interest, convenience, or necessity will be served by granting it, it shall authorize issuance of the license.[18] Only in the

[18] Under Section 308 (b), the Commission may require from the applicant further written statements of fact under oath to enable it to determine whether the application should be granted or denied.

event that the Commission, upon such an examination, does *not* determine that the granting of the license would serve the public interest is it required to accord the applicant an opportunity to be heard. In other words, the Act provides for a hearing only to give an applicant an opportunity to protest denial of a license, and not to give others an opportunity to protest granting of a license.

Plainly, since the Commission may grant a license without a hearing, it is not required to make findings of fact other than the ultimate finding that the public interest, convenience, or necessity will be served by granting the application; in a situation such as this, detailed subsidiary findings would be both inappropriate and superfluous. It seems clear, too, that if the Commission is not required to make findings when it grants an application without a hearing, it is not required to make findings in cases where it determines, in its discretion, that a hearing should be held before the license is granted. No provision of the statute authorizes any such distinction to be drawn. And simply because the Commission, as a matter of administrative practice, sometimes issues a statement concerning the more important bases of its action, as it did in this case, does not mean that if such statement is not complete or is even erroneous, the Commission's action is illegal. The issuance of such a statement is analogous to announcements made by other agencies of their reasons for taking some executive or administrative action. Such an

announcement may, in the discretion of the agency, be as complete or as meager as the agency chooses. See *Virginian Ry.* v. *Federation,* 300 U. S. 515, 561–562.

Neither the Commission nor its predecessor, the Federal Radio Commission, has ever assumed, in acting upon an application for a new license or for the renewal or modification of an existing license, that any detailed findings of fact were required. Hundreds of thousands of such applications have been granted without any detailed findings having been made, only an entry on the Commission's minute book evidencing the action taken. If the Commission were obligated to make detailed findings with respect to every application made for a new license or for the renewal or modification of a license, an almost intolerable burden would be placed on it. This practical consideration is doubtless the reason why Congress did not write into the Act any requirement for detailed findings, and was certainly a determining factor in molding the consistent administrative practice.

In *Missouri Broadcasting Corporation* v. *Federal Communications Commission,* 94 F. (2d) 623, certiorari denied, 303 U. S. 655, the court below expressed the view that the requirement of Section 402 (c) that in the event of an appeal from an order of the Commission to the Court of Appeals the Commission shall within 30 days after the filing of the record, "file a full statement in writing of the facts and grounds for its decision as found and

given by it" implied that the statement to be filed by the Commission should be merely a formal restatement of factual findings previously made. See also *Saginaw Broadcasting Co.* v. *Federal Communications Commission, supra; Heitmeyer* v. *Federal Communications Commission, supra.* This view we believe to be untenable since, if the Commission were required to make detailed findings of fact, those findings would be part of the record previously filed in the court below and there would therefore be no purpose served by the "full statement" expressly provided for by Section 402 (c).

Nor can a requirement that detailed findings be made be spelled out of the provision of Section 402 (c) that review by the Court of Appeals "shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive" unless clearly arbitrary or capricious. It does not follow that, because findings of fact, when made, are binding upon the court below if supported by substantial evidence, the Commission is required to make detailed findings whenever it acts, with hearings or without. It may be that the requirement that the Commission hold a hearing before denying a license implies that, in the case of such a denial, the Commission should make findings; if so, Section 402 (c) makes those findings conclusive when supported by substantial evidence. And in those contested cases where the Commission, in the exercise of its discretion, makes detailed findings in

granting an application, Section 402 (e) would seem likewise to make those findings binding if they have substantial basis in the record. This section operates, therefore, as its legislative history indicates that it was intended to operate,[19] as a restriction upon the scope of review by the Court of Appeals; nothing in the language of the section or in its legislative history indicates that it was designed for the further purpose of prescribing or limiting the procedure to be followed by the Commission.

There can be no contention that the constitutional requirement of due process requires the Act to be construed so as to provide for detailed findings by the Commission. Any aggrieved person who is unable to secure adequate protection of his rights by availing himself of the special remedy of direct appeal may institute an original suit in a

[19] Section 16 of the Radio Act of 1927 (44 Stat. 1162), the predecessor of Section 402 (e), provided that the Court of Appeals might "alter or revise the decision appealed from and enter such judgment as to it might seem just." In *Radio Commission* v. *General Electric Co.*, 281 U. S. 464, this Court held that this Section made the court below a "superior and revising agency" in the administrative field, thus precluding this Court from reviewing a judgment of the court below directing the Commission to issue a license upon the terms found in the expiring license. Section 16 was thereupon amended (c. 788, 46 Stat. 844) to read, so far as here material, substantially as does the present Section 402 in order that the Court of Appeals would be limited to judicial, as distinguished from administrative, review, thereby giving this Court jurisdiction to review its decisions. H. Rep. No. 1665, S. Rep. No. 1105, 71st Cong., 2d Sess. See *Radio Commission* v. *Nelson Bros.*, 289 U. S. 266, 276.

court of competent jurisdiction (Section 414). In such an action he would have full opportunity to present any evidence which was relevant and material to the issues and the court would be free to examine any facts which the Commission had failed to consider in granting the application. *Virginian Ry.* v. *Federation*, 300 U. S. 515, 562. The requirement of due process clearly does not extend further than affording persons who have suffered legal injury from an action of the Commission a right to contest that action in an appropriate judicial tribunal.

We are not unmindful of the fact that in several cases this Court has declared that a complete statement of the grounds upon which an administrative agency acts is desirable for a proper consideration of the case in the courts. *Beaumont, S. L. & W. Ry. Co.* v. *United States*, 282 U. S. 74, 86; cf. *Virginian Ry.* v. *United States*, 272 U. S. 658, 675; *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, 464–465.[20] This fact, together with other considera-

[20] It should be pointed out that an order granting an application for a radio station license is essentially different from the orders which were under review in the *Baltimore & Ohio* and *Florida* cases, *supra*; it does not, as did those orders, purport to compel obedience under penalty to regulations clearly and directly impinging upon property rights. The person most directly affected by an order of the Commission granting a license is the applicant, who is in no way harmed by the absence of detailed findings. That others may be affected indirectly through the operation of the applicant's station is a possible but by no means inevitable result. The

tions, has impelled the Commission voluntarily to set forth the grounds of its decisions in most contested proceedings before it, as it did in the case at bar (R. 409–416). But, as pointed out in the *Baltimore & Ohio* case, the "lack of such a complete statement, while always regrettable, because unnecessarily increasing the labor of the reviewing court, * * * is not fatal to the validity of the order" (293 U. S. at 464–465). In the absence of a statutory mandate that such a complete statement be made, only the basic, quasi-jurisdictional finding is necessary (*id.*)—in this case, that the grant of the license will serve the public interest, convenience, or necessity. That finding the Commission has made (R. 416).

3. If the grant of the license to the Telegraph Herald may not be set aside because of the Commission's failure to make detailed findings on the issue of competitive effect, the decision below must be reversed, even if the Commission were required to consider that issue. The Commission found that the construction and operation of the new station would serve the public interest, convenience, or necessity; that finding may be set aside only if the record demonstrates that it is clearly erroneous in view of the effect of the new station upon respondent's business. No such demonstration can be

framework of the Act shows that Congress was not sufficiently concerned about this contingency to require the Commission to make detailed findings when it grants an application.

made. The evidence introduced by respondent tended to establish only that it would suffer some financial loss (see p. 4, *supra*); it did not establish that the threatened diversion of some of respondent's advertising revenue to the Telegraph Herald would be contrary to the public interest. Consequently, even if this question is in issue, the Commission's finding can not be set aside as in disregard of the evidence or as arbitrary or capricious.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed with instructions to dismiss respondent's appeal.

FRANCIS BIDDLE,
Solicitor General.
RICHARD H. DEMUTH,
Special Attorney.

WILLIAM J. DEMPSEY,
General Counsel,
WILLIAM C. KOPLOVITZ,
Assistant General Counsel,
ROBERT M. COOPER,
Assistant to the General Counsel,
BENEDICT P. COTTONE,
HARRY M. PLOTKIN,
Counsel,
Federal Communications Commission.

JANUARY 1940.

APPENDIX

The relevant provisions of the Communications Act of 1934 (Act of June 19, 1934, c. 652, 48 Stat. 1064, as amended by the Act of June 5, 1936, c. 511, 49 Stat. 1475; and as amended by the Act of May 20, 1937, c. 229, 50 Stat. 189; 47 U. S. C. 151 *et seq.*) are as follows:

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

* * * * * *

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

* * * * * *

SEC. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the

District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

* * * * *

(d) Determine the location of classes of stations or individual stations;

* * * * *

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the fre-

quencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

* * * * *

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

* * * * *

SEC. 307.

(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies,

hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

(e) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license.

* * * * *

SEC. 309.

(a) If upon examination of any application for a station license or for the renewal or modification of a station license the Com-

mission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

SEC. 310.

* * * * *

(b) The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control

of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

SEC. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

SEC. 312.

(a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of

fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however,* That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.

(b) Any station license hereafter granted under the provisions of this Act, or the construction permit required hereby and hereafter issued, may be modified by the Commission, either for a limited time or for the duration of the term thereof, if in the judgment of the Commission, such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: *Provided, however,* That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing

of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity to show cause why such an order of modification should not issue.

SEC. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

SEC. 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or

under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the

District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

* * * * * *

SEC. 319. (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the

proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) * * * The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. * * *

* * * * * *

SEC. 402.

(a) The provisions of the Act of October 22, 1913 (38 Stat. 219), relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except any order of the Commission granting or refusing an application for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license; or suspending a radio operator's license) and such suits are hereby authorized to be brought as provided in that Act. (As amended May 20, 1937, c. 229, § 11, 50 Stat. 197.)

(b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of

the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission. (As amended May 20, 1937, c. 229, § 12, 50 Stat. 197.)

(c) Such appeal shall be taken by filing with said court within twenty days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington. The Commission shall thereupon immediately, and in any event not later than five days from the date of such service upon it, mail or otherwise deliver a copy of said notice of appeal to each person shown by the records of the Commission to be interested in such appeal and to have a right to intervene therein under the provisions of this section, and shall at all times thereafter permit any such person to inspect and make copies of the appellant's statement of reasons for said

appeal at the office of the Commission in the city of Washington. Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application or order involved, and also a like copy of its decision thereon, and shall within thirty days thereafter file a full statement in writing of the facts and grounds for its decision as found and given by it, and a list of all interested persons to whom it has mailed or otherwise delivered a copy of said notice of appeal. (As amended May 20, 1937, c. 229, § 13, 50 Stat. 197.)

(d) Within thirty days after the filing of said appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of shall be considered an interested party.

(e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Pro-*

vided, however, That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

(f) The court may, in its discretion, enter judgment for costs in favor of or against an appellant, and/or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

* * * * *

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: *Provided, however,* That in the case of a decision, order or requirement made under Title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application

shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination, shall be subject to the same provisions as an original order.

SEC. 414. Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

U. S. GOVERNMENT PRINTING OFFICE: 1940

FILE COPY

SUPREME COURT, U.S.
FILED
SEP 13 1939
CHARLES ELMORE CROPLEY
CLERK

No. 493

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION

INDEX

CITATIONS

Cases: Page

Cape Cod Broadcasting Co., In re, 5 F. C. C. 430 7
Fall River Herald News Publishing Co., In re, 5 F. C. C. 377 6
Federal Trade Commission v. *Pacific Paper Ass'n*, 273 U. S. 52 15
Fly v. *Heitmeyer*, No. 316, present Term 8
Genesee Radio Corporation, In re, 5 F. C. C. 183 6
Hazelwood, Inc., In re, F. C. C. Docket No. 5698 13
Hubbard v. *Tod*, 171 U. S. 474 16
Jackman, R. R., In re, 5 F. C. C. 496 6
Louisville Times Company, The, In re, 5 F. C. C. 554 6
Moffat Tunnel League v. *United States*, 289 U. S. 113 13
Pittsburgh & West Virginia Ry. v. *United States*, 281 U. S. 479 13
Radio Commission v. *Nelson Bros. Co.*, 289 U. S. 266 10
Sprunt v. *United States*, 281 U. S. 249 13
United States v. *Corrick*, 298 U. S. 438 2
United States v. *Griffin*, 303 U. S. 226 2

Statutes:

Communications Act of 1934, June 19, 1934, c. 652, 48 Stat. 1064, as amended by the Act of June 5, 1936, c. 511, 49 Stat. 1475, and as amended by the Act of May 20, 1937, c. 229, 50 Stat. 189 (U. S. C., Title 47, Sec. 151, *et seq.*):

Sec. 4 (j) 11
Sec. 307 (b) 7
Sec. 308 (b) 2, 4
Sec. 319 (a) 2, 4
Sec. 402 (b) (2) 8, 9, 11, 13, 14
Sec. 402 (d) 14
Sec. 405 ..... 8, 14

Radio Act of 1927, c. 169, 44 Stat. 1162, Sec. 16, as amended by the Act of July 1, 1930 (c. 788, 46 Stat. 844) 9

Miscellaneous:

72 Cong. Rec. 11529, 11530, 11882 10
H. Rep. No. 1665, 71st Cong., 2d Sess 10
S. Rep. No. 1105, 71st Cong., 2d Sess 10

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 493

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

SANDERS BROTHERS RADIO STATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION

I

Respondent contends that the Commission has no standing to raise the questions argued at bar because its motion to dismiss in the court below was predicated solely on the alleged untimeliness of the appeal (see brief, pp. 16–19, 37–39). The contention is without merit. Insofar as the Commission urges reversal of the decision below on the ground that respondent had no standing to appeal under Section 402 (b) (2) of the Act, it is raising a jurisdictional question. Such a question may be raised at any time and, even if not raised by the

parties, may be decided by the Court *sua sponte*. *United States* v. *Corrick*, 298 U. S. 435, 440; *United States* v. *Griffin*, 303 U. S. 226. Insofar as reversal of the decision below is urged on the ground that the Commission was not obligated to make findings with respect to the competitive effect of the new station upon respondent, petitioner is not raising a new issue but simply asking this Court to review the question decided by the court below (R. 471–475).

II

Respondent entirely fails to meet the argument advanced in Point I of our main brief that the Commission, in passing upon an application for a license for a new station, is under no duty to protect existing licensees from competition. Instead, it advances the view, which we do not contest, that under the provisions of Sections 308 (b) and 319 (a) the Commission must consider the financial ability of the applicant to render the proposed service and therefore must consider the effect, if any, of the competitive situation upon *the applicant's* financial qualifications.

It is important to understand the difference between these two arguments. Quite obviously, the Commission is and must be concerned with the financial qualifications of an applicant for a license; it would be just as much in violation of the statute to assign one of the limited number of radio frequencies to a person financially unable to make use of it as it would be to assign a frequency to a person

technically or legally unqualified to use it.[1] Consequently, if, after one license has been granted, another person files an application for a license, his application should be denied if he is financially unable to sustain the proposed operation because of the effect of competition from the existing station, or for any other reason. But if the new applicant shows that he is financially able to render the service proposed, then the application should be granted even though the community may be able to support only one station. The fact that granting the new license may impair the ability of the existing licensee to render service in the public interest, or may even drive him out of business entirely, is immaterial; the new station will have this effect, as we pointed out in our main brief (pp. 30–32), only if it renders superior service. Therefore, the public interest, which is the touchstone of all Commission action, will be advanced rather than impaired by the granting of the new license, irrespective of the effect upon the existing licensee. The better the new station is, the greater will be its adverse effect upon the existing station, and the greater will be its beneficial effect upon the public interest.

Respondent's confusion arises from the fact that it reads into the Commission's duty to deny a license to an applicant who is not financially qualified

---

[1] Similarly the Commission must consider the financial qualifications of an applicant for the renewal of a license. See our main brief, pages 32–33.

a duty to maintain the financial integrity of persons whose applications have been granted. This is a *non sequitur*. It is clearly in the public interest to license only those financially qualified, but it is not in the public interest to maintain the financial integrity of a licensee at the expense of depriving the public of the service of another financially qualified licensee who can impair the ability of the first licensee to render service only by himself rendering a superior service.

The requirement of Sections 308 (b) and 319 (a) that the Commission consider the financial qualifications of the applicant, like the cognate requirement that it consider his citizenship, character, and technical ability, is designed for the protection of the public and not for the protection of existing licensees. Therefore, while the financial ability of the applicant itself is a relevant consideration in determining whether the application is in the public interest, once it has been established that the applicant is financially qualified, the effect of his proposed operation upon existing stations is entirely immaterial.

III

In our main brief we pointed out that respondent has no right to freedom from competition either as a licensee authorized to use radio transmitting equipment or as a person engaged in furnishing an advertising medium (Br. 41). Respondent seeks to avoid the force of the arguments presented by urging that the legal injury of which

it complains is a "loss of listeners" (Br. 45). Its contention necessarily assumes that the Act confers on the licensee of a broadcast station a substantive right to protection from competition from any other broadcast station, whether commercially operated or not, which might succeed in inducing part of the listening public to tune in on its programs. The Act can be searched in vain for any indication that the grant of a license confers any such substantive right. To the contrary, as pointed out in our main brief (pp. 18–34), the underlying policy of the Act is that competition for listeners shall be fostered in order to insure high quality programs and that the limited number of radio frequencies shall be utilized to the utmost in order that the listening public may have the widest possible choice of programs. It can scarcely be contended that it is against the public interest for the people of Dubuque to have another radio station to whose programs they can listen or that Congress intended to give respondent a right to protest the action of the Commission because it will have this result. If, in the future, fewer persons will listen to respondent's programs, it will be because part, at least, of the listening public prefers the programs presented by Telegraph-Herald. Respondent can certainly have no claim of right under the Act to protection from loss of listeners occasioned by its own inability to render a program service attractive enough to retain them.

IV

In our main brief (p. 34) we asserted that neither the Federal Communications Commission, the Federal Radio Commission, nor the Secretary of Commerce had ever denied a license to one otherwise qualified on the ground that his competition may injuriously affect an existing licensee. Respondent states (Br. 32–36) that this assertion is contrary to fact and points particularly to four decisions of the Commission which are allegedly inconsistent with the statement made by us. In three of these cases (*In re Genesee Radio Corporation*, 5 F. C. C. 183, 187; *In re R. R. Jackman*, 5 F. C. C. 496, 500; *In re The Louisville Times Company*, 5 F. C. C. 554, 559), the Commission's denial of the application was based upon the fact that the applicant was already a licensee of an existing station covering the same area as that covered by the station sought to be licensed. An additional station licensed to the holder of a license of a station already serving the community would not create additional competition, but would tend toward monopolization. It was for this reason that the applications for the second station were denied.

The opinion of the Commission in *In re Fall River Herald News Publishing Co.*, 5 F. C. C. 377, 381, 382, cited by respondent at page 33 of its brief and at pages 85–89 of the appendix thereto, does contain dicta concerning the effect which might

result to an existing station by the addition of a second station in Fall River, but it is perfectly apparent from the decision in its entirety that this was not the reason for the denial of the application. On page 88 of the appendix to respondent's brief asterisks are used to denote the omission of certain findings, and on page 89 asterisks are used in lieu of the fourth conclusion supporting the Commission's action. Reference to the complete decision will show that there were pending before the Commission at the time of its action on the Fall River application two other applications requesting the same frequency for a station in two other communities not then having radio stations. The important consideration in denying the application for the second station in Fall River was the fact that the granting of the application would preclude the establishment of a station in either of these other two communities. The Commission's refusal was not designed to protect the existing station but to provide a fair and equitable distribution of radio facilities in the public interest.[2] See Section 307 (b).

---

[2] On the same day that the Commission denied the application to establish the second station in Fall River, Massachusetts, on 1210 kc., the Commission granted an application to establish a station in Barnstable, Massachusetts, on that frequency. *In re Cape Cod Broadcasting Co.*, 5 F. C. C. 430. The Barnstable application is one of those mentioned in the *Fall River* decision as being in conflict with the Fall River application. 5 F. C. C. 430, 437–439.

Respondent makes reference to the factual situation in *Fly* v. *Heitmeyer*, No. 316, present Term, decided January 29, 1940, and asserts that the Commission's desire to hold a further hearing on the Heitmeyer application evidences a policy directly in conflict with that taken in the instant case. The only question involved in the *Heitmeyer* case was the authority of the Commission to take further evidence on an application after the court below had reversed a decision of the Commission denying such application. The purpose of the hearing was to ascertain the qualifications of Heitmeyer as a proposed licensee. At no time either before the Commission or in the courts was it ever intimated that the purpose of the Commission in taking further evidence to determine the qualifications of Heitmeyer to construct and operate a station in Cheyenne, Wyoming, was to protect an existing licensee from economic injury. As a matter of fact, there is no existing licensee in Cheyenne.

V

In urging that it is a "person aggrieved or whose interests are adversely affected" within the meaning of Section 402 (b) (2), respondent relies heavily on (1) the legislative history of the section, (2) the practice of the Commission in allowing interventions in proceedings before it, (3) the language of Section 405 relating to petitions for rehearing before the Commission and (4) the

language of Section 402 (d) relating to interventions in appeals taken under Section 402 (b) (2). None of the considerations adverted to support respondent's argument.

1. The discussion in respondent's brief and in the appendix to its brief of the legislative history of Section 402 (b) (2) is incomplete and for the most part irrelevant. Section 402 (b) (2) is a reenactment of Section 16 of the Radio Act of 1927, as amended by the Act of July 1, 1930 (c. 788, 46 Stat. 844). As originally enacted, Section 16 of the Radio Act of 1927 gave no right of appeal from the granting of a license by the Commission but made the court below a superior administrative body to review denials of licenses by the Commission. An appeal from the granting of a license was first provided for by the 1930 amendment to Section 16 and Section 16 as thus amended was reenacted as Section 402 (b) (2) of the Communications Act of 1934.

In the so-called legislative history contained in the appendix to its brief, respondent has an extended discussion of bills which were never enacted into law and of statements made concerning those bills. Nowhere in its discussion does respondent refer to the reports of the House Committee on Merchant Marine and Fisheries and of the Senate Committee on Interstate Commerce on H. R. 12599 which was enacted as the Act of July 1, 1930. The report of the House Committee, after setting forth

the original Section 16 and the proposed new Section 16, added only the following two paragraphs (H. Rept. No. 1665, 71st Cong., 2d Sess., p. 2):

> The purpose of the amendment is to clarify the procedure on appeal to the court from decisions of the Federal Radio Commission, to more clearly define the scope of the subject matter of such appeals, and to insure a review of the decision of the Court of Appeals of the District of Columbia by the Supreme Court.
>
> This amendment was part of H. R. 11635, which unanimously passed in the House on April 30, 1930. Because of the urgent need of this legislation and the probability that consideration of H. R. 11635 will not be reached in the Senate, the amendment is offered as a separate bill.

The Senate Committee in its report adopted as its own views the views expressed in the House Report (S. Rept. No. 1105, 71st Cong., 2d Sess.).

The debates on the bill in Congress centered around the fact that under the amendment the court below would no longer be a superior and revising agency in the administrative field but an appellate tribunal exercising judicial functions, so that its decisions could be reviewed by this Court. See 72 Cong. Rec. 11529, 11530, 11882; *Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266, 276. There is nothing whatever in the debates, as there

is nothing in the reports of the Congressional committees, which indicates that Congress intended by the amendment to confer legal rights upon persons not already possessing them or to make a remedy by way of appeal available to persons whose legal rights are not invaded by the administrative action sought to be reviewed.

2. There is similarly nothing in the administrative practice of the Commission with respect to intervention in proceedings before it which lends support to the contention that respondent is a "person aggrieved or whose interests are adversely affected" within the meaning of Section 402 (b) (2). There is no provision in the statute giving any right of intervention in Commission proceedings; indeed, the only requirement of a hearing before the Commission is contained in Section 309 (a) which provides that if the Commission, upon examination of an application, does not determine that the public interest, convenience, or necessity will be served by granting the application; the Commission "shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, *and shall afford such applicant an opportunity to be heard* under such rules and regulations as it may prescribe." [Italics supplied.]

However, under the provision of Section 4 (j) that "The Commission may conduct its proceedings in such manner as will best conduce to the

proper dispatch of business and to the ends of justice," the Commission, like many other administrative agencies, has adopted a liberal policy of allowing intervention by any persons who allege that they have a substantial interest in the proceeding, whether or not they have such an interest as would be cognizable in a court of law.[3] Chambers of commerce, states, and all types of persons and organizations having an interest in the proceedings have been allowed to intervene. Consonant with this liberal policy, the Commission has always considered a licensee of an existing station, who might suffer financial damage as a result of competition from a new station, as having an interest in the outcome of the proceeding sufficient to warrant his intervention. The Commission's former practice was to permit intervention by such persons almost at will on the theory that their participation in the proceedings would assist the Commission in determining the issues presented by the new application. More recently the Commission's policy has been changed, not with respect to such persons alone but with respect to all persons desiring to intervene in Commission proceedings,

[3] The Commission's past and present rules with respect to intervention are found in the appendix to respondent's brief at pp. 73–76.

so as to require a showing that their participation in the proceedings will be in the public interest.[4]

But there is nothing in either the past or present procedure of the Commission with respect to intervention which throws any light on the question of who may appeal under Section 402 (b) (2) from an order of the Commission granting an application. A chamber of commerce, or a state, may have sufficient interest in the application to be heard before the Commission, but this certainly does not mean that they can appeal under Section 402 (b) (2). Similarly, the fact that an existing licensee may have sufficient interest for intervention does not mean that he has a legal right or interest which is subject to judicial cognizance. The decisions of this Court in *Sprunt & Son* v. *United States*, 281 U. S. 249; *Pittsburgh & West Virginia Ry.* v. *United States*, 281 U. S. 479; and *Moffat Tunnel League* v. *United States*, 289 U. S. 113, demonstrate that an interest which may be recognized by an administrative agency as entitling a person to intervene in the proceedings before it is not necessarily such an interest as entitles the person to

[4] For a discussion of the Commission's past and present practice with respect to permitting intervention, the Court is referred to the opinion of Commissioner Payne on a petition to intervene and enlarge issues in the case of *In re Hazelwood, Inc.*, Docket 5698, printed as an appendix to this brief.

invoke the jurisdiction of the courts to test the validity of the administrative action.

3. Respondent points to the fact that Section 405 of the Act, relating to petitions for rehearing before the Commission, provides that such petitions may be filed by "any person aggrieved or whose interests are adversely affected," and suggests that it is unreasonable to assume that Congress intended to confine petitions for rehearings to those whose legal rights or interests are invaded by the Commission's action. There is no necessity to indulge in the assumption, since Section 405 also permits a petition for rehearing to be filed by "any party"—i. e., by any person who has intervened in the administrative proceeding. It is entirely reasonable to assume that Congress did not intend to allow a petition for rehearing to be filed by any person who was not a party to the proceedings in which the decision was made unless such person has a legal right cognizable in court.

4. Respondent also points to Section 402 (d) of the Act which provides that in appeals taken under Section 402 (b) any person "who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of" may intervene in the appeal. Petitioner suggests that intervention under this section cannot be limited to those seeking to protect legal rights or interests, but

states no reason why this should not be so. In our view, the section means simply that any person may intervene who could have appealed from the decision of the Commission had it gone the other way. The application of the section is illustrated by the intervention in the court below of the Telegraph Herald which would clearly have had a right to appeal had the Commission denied its application for a license.

VI

Respondent urges in Point IV of its brief that the failure of the Commission to serve it with various memoranda or reports on the case, prepared by the Engineering, Law and Examining Departments of the Commission, deprived respondent of a fair hearing and asks that the judgment of the court below be modified to include instructions to the Commission to disclose the contents of these memoranda. Respondent raised this point in the court below by a motion suggesting a diminution of the record. In reply to the motion, the Commission certified that the reports referred to "do not themselves constitute evidence in the record nor were they so considered by the Commission in making its decision." (R. 476.) The court below sustained the Commission on this point, stating (R. 476–477):

> * * * appellant's assertion—upon information and belief—of improper action

upon the part of the Commission is entirely unsupported by the record and is contradicted by appellee's positive denial heretofore noted. In its brief, on this appeal, the Commission described the files which it keeps in connection with applications filed with it and said: "neither these files nor the contents thereof are used as evidence in any case after it is designated for hearing except as the contents of the technical or legal recommendations may be incorporated into the record by the testimony of witnesses under oath and subject to cross-examination." Under the circumstances the presumption of regularity of official conduct is controlling.

Moreover, even if the court below had erred in denying respondent's motion, respondent could not be heard to contest this ruling on the record in this Court. Respondent urges the point not as an additional ground for sustaining the judgment below but as the basis of modifying the judgment rendered in his favor. If respondent was dissatisfied with the relief decreed by the court below or if it believed that it was entitled to additional relief, it should have raised this question by means of a cross-petition for certiorari. Having failed to file such a cross-petition, it cannot now secure modification of the decree in its favor. *Hubbard* v. *Tod*, 171 U. S. 474; *Federal Trade Commission* v. *Pacific Paper Association*, 273 U. S. 52; *Lucas* v. *Alexander*, 279 U. S. 573.

CONCLUSION

The decision of the court below should be reversed.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

RICHARD H. DEMUTH,
Special Attorney.

WILLIAM J. DEMPSEY,
General Counsel,
WILLIAM C. KOPLOVITZ,
Assistant General Counsel,
ROBERT M. COOPER,
Assistant to the General Counsel,
BENEDICT P. COTTONE,
HARRY M. PLOTKIN,
Counsel,
Federal Communications Commission.

FEBRUARY 1940.

APPENDIX

36567

OCTOBER 2, 1939.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D. C.

In re Application of Hazelwood, Inc. (New), Orlando, Florida, for Construction Permit to Erect a Radiobroadcast Station to Operate on 1390 kc., With 1 kw. Power, Unlimited Time. Docket No. 5698

DECISION ON PETITION TO INTERVENE AND REQUEST FOR ENLARGEMENT OF THE ISSUES

PAYNE, Commissioner (Presiding at Motions Docket)

This petition was filed by the Orlando Broadcasting Company, Inc., licensee of Radio Station WDBO, Orlando, Florida, and requests leave to intervene in the hearing designated by the Commission on the above-entitled application and further requests that the issues heretofore designated by the Commission to be heard at said hearing be enlarged to include the following: (a) to determine the extent of the broadcast service already rendered in the Orlando area; (b) to determine if the interests of Station WDBO will be adversely affected by a grant of the above-entitled application; and (c) to determine whether the operations of the sta-

tion proposed by the applicant will be in accord with the Commission's plan of allocation and standards of good engineering practice.

Petitioner requests that it be made a party in the proceedings on the application of Hazelwood, Inc., and that it be allowed to present evidence on the issues listed in the Notice of Hearing heretofore published by the Commission as well as upon the additional issues requested to be added and any further issues which may be added hereafter.

When the application of Hazelwood, Inc., was received by the Commission it was examined as required by Section 309 (a) of the Act, and because the Commission was unable upon such examination to reach the decision that the public interest, convenience, and necessity would be served by a grant of the application it was designated for hearing in order to afford the applicant an opportunity to be heard on the question of whether or not the application should be granted. The only issue specified by the Commission in the Notice of Hearing was that relating to the possibility of adverse effect upon the service rendered by Stations KLRA, WHK, and WMFJ by reason of electrical interference which might result from the operation of the proposed new station.

The instant petition to intervene and to enlarge the issues to include questions other than those specified in the Notice of Hearing requires an interpretation of the Commission's rule 1.102 which became effective on August 1, 1939. Because the questions raised by the instant petition are also involved in a number of other petitions now pending on the motions docket, I feel that it is appropriate to express in some detail my views con-

cerning the sufficiency of the instant petition in the light of the Commission's present rule governing intervention and enlargement of issues.

The Commission's rule relating to intervention and enlargement of issues, reads as follows:

> SEC. 1.102 . *Intervention.*—Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed or verified in accordance with Sec. 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

In applying this rule to the instant petition I will deal with the request to intervene, and the request to enlarge issues separately.

PETITIONER'S REQUEST TO INTERVENE

The underlying purpose of the Commission in adopting its present rule on intervention was to correct a practice which had become prevalent under the prior rule of the Commission relating to intervention. Under its former rule, the Commission permitted any person to intervene in a hearing if his petition disclosed "a substantial interest in the subject matter." This standard was so broad and the Commission's practice under it

was so loose that intervention in Commission hearings came to be almost a matter lying in the exclusive discretion of persons seeking to become parties to Commission proceedings. The experience of the Commission during the past few years clearly demonstrated that the participation of parties other than the applicant in broadcast proceedings in a great many cases resulted in unnecessarily long delays and expense to both the Commission and applicants without any compensating public benefit. In many cases the major function served by intervenors was to impede the progress of the hearing, increase the size of the record, confuse the issues, and pile up costs to the applicant and to the Commission through the introduction of cumulative evidence, unnecessary cross-examination, dilatory motions, requests for oral argument, and other devices designed to prevent expeditious disposal of Commission business.

The underlying purpose of the present rule is to limit participation in proceedings, particularly on broadcast applications, to those persons whose participation will be of assistance to the Commission in carrying out its statutory functions. The present rule requires a petitioner to set forth not only his interest in the proceeding but also "the facts on which the petitioner bases his claim that his intervention will be in the public interest." The fact that a proposed intervener may have the right to contest in a court the validity of an order granting or denying a particular application does not in and of itself mean that such person is entitled as a matter of right to be made a party to the proceedings before the Commission on such application. Inter-

vention in proceedings before administrative agencies like the Federal Communications Commission is ordinarily covered by statutory provision. The Communications Act contains no provisions giving the right of intervention in proceedings before the Commission to any person or class of persons, but expressly provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. By the adoption of Rule 1.102 the Commission in effect has declared that it will conduce to the proper dispatch of business and to the ends of justice if it permits intervention in a proceeding before it only if the making of a record in which the facts are fully and completely developed, is facilitated by permitting the requested intervention. It is this theory—that where the public will benefit through aid or assistance given to the Commission or the applicant by a party-intervenor in a broadcast hearing, such participation should be permitted—which underlies Rule 1.102.

The petition of the Orlando Broadcasting Company, Inc., utterly fails to meet the requirement of the present rule on intervention. Insofar as it requests permission to participate in the hearing already designated on the application of Hazelwood, Inc., it simply prays that the petitioner be made a party and be allowed to present "evidence." Not the slightest intimation is given as to the type of evidence which the petitioner desires to adduce or what petitioner intends to prove by the introduction of such evidence. The only issue mentioned in the Commission's Notice of Hearing is the issue of

electrical interference to Stations KLRA, WHK, and WMFJ, which are now operating either on 1390 kc. (the frequency requested by Hazelwood, Inc.) or on adjacent frequency. The petitioner operates its station on 580 kc.; so there could be no electrical interference to petitioner's station, and while it would not be impossible for the petitioner to obtain data on the issue specified in the Commission's Notice of Hearing, it is not likely that the petitioner is as well informed or is as well-equipped to adduce testimony concerning the issue of electrical interference as is the Commission itself. Without a proper showing of the type of evidence proposed to be adduced and the facts expected to be proved thereby, the Commission would not be justified in permitting the petitioner to intervene in the proceedings on the application of the Hazelwood, Incorporated.

On the basis of the allegations now set forth in the instant petition the request for intervention must be denied insofar as it requests permission to participate in the hearing on the issue already designated. Insofar as the petition requests permission to adduce evidence pertaining to the issues which it requests the Commission to add to the Notice of Hearing, it is necessarily contingent upon the action which is taken on the request to enlarge issues. For reasons stated below, this request must also be denied. Hence, the request to intervene in order to adduce evidence relating to these issues must be denied not only for the reasons above stated but also because the request to enlarge issues is denied.

The determination of what issues an applicant for broadcast facilities should be required to meet in a hearing on his application is a matter committed by Congress to the discretion of the Commission. No hearing whatever is required if the Commission is able upon an examination of an application to determine that the public interest, convenience, and necessity will be served by granting the application. If the Commission is not able to reach such a determination upon the examination of an application the statute requires that notice and an opportunity to be heard shall be given the applicant, but not otherwise.

Good administration, both from the theoretical and practical standpoint, requires that unduly long and expensive hearings should be avoided. Therefore, the Commission should not burden itself or the applicant by the injection in a hearing of issues concerning which the Commission has already satisfied itself. Furthermore, if in a particular case it appears that a hearing on a particular issue would be expensive and time consuming, while a hearing on another issue, which might finally dispose of the application, would be relatively inexpensive and expeditious, the Commission as a matter of administrative convenience should set down the application for hearing only on the latter issue.

In the instant case the Commission was unable to find that the public interest, convenience, and necessity would be served by granting the application of Hazelwood, Inc., because of the possibility of interference with the service now rendered by three other stations. If at the hearing on its appli-

cation the applicant is unable to sustain the burden with respect to this issue, the Commission will enter an order denying the application, which will completely dispose of the proceedings. In such event it would have been wholly unnecessary and wasteful of both time and money for the Commission to have ordered a hearing not only upon the issue of electrical interference but also upon other issues which might also have constituted a basis for denying the application.

It is incumbent upon any person requesting the injection of new issues in a hearing to show not only that the issues which he proposes to have the Commission add are proper matters for the Commission to consider, and that there is a basis for believing that the Commission will be required to deny the application on the new grounds alleged, but also that the proposed new issues should be heard at the hearing already set rather than at a later time. Certainly, if the issues specified by the Commission in a Notice of Hearing are in themselves a sufficient basis for denying an application if the applicant fails to sustain its burden of proof, no third person is harmed because the Commission does not also include in the hearing other and different issues, even though conceivably it may be necessary at some later time for the Commission to designate the application for further hearing if the applicant meets its burden on the issues already specified. The instant petition to enlarge issues merely states that the three issues requested for inclusion in the hearing are proper issues for the Commission to consider before acting upon the application of Hazelwood, Inc. Assuming for the purpose of this opinion but not conceding that the

three issues proposed to be included in the hearing are proper for the Commission to consider, petitioner has utterly failed to show that the insertion of these additional three issues in the hearing at this time on the application of Hazelwood, Incorporated, would expedite the disposition of this application and not merely result in a more costly, drawn-out, and complicated record, with no attendant advantages to the Commission or to the public.

For the foregoing reasons, the petition to enlarge issues is denied.

By order of George Henry Payne, Commissioner.

FEDERAL COMMUNICATIONS COMMISSION,

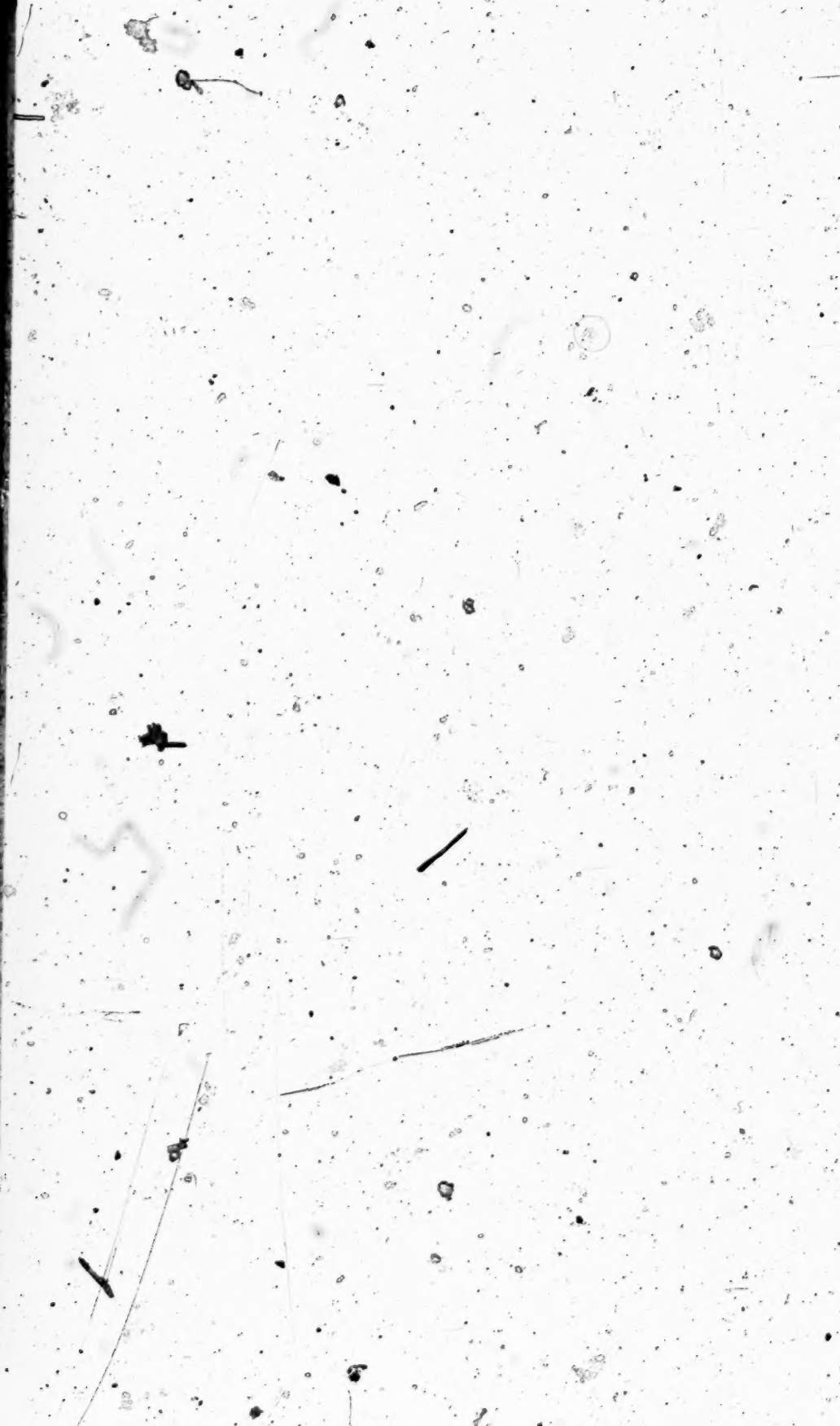
T. J. SLOWIE,

(T. J. Slowie)

Secretary.

Dated SEPTEMBER 29th, 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1940



FILE COPY

Supreme Court, U. S.
FILED
DEC 1 1939
CHARLES ELMORE CROPLEY
CLERK

No. 499.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR SANDERS BROTHERS RADIO STATION IN OPPOSITION.

LOUIS G. CALDWELL,
REED T. ROLLO,
PERCY H. RUSSELL, JR.,
Counsel for Respondent.

December 1, 1939

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	2
STATEMENT	2
ARGUMENT	7
I. The Respondent is a "Person Aggrieved or Whose Interests Are Adversely Affected" by a Decision of the Commission Within the Meaning of Section 402(b)(2) of the Communications Act of 1934	7
II. The Failure of the Commission to Make a Finding of the Economic Effect Which the Granting of the Application of the Telegraph Herald Would Have Upon the Respondent's Station was Arbitrary and Capricious and Constituted Reversible Error	23
CONCLUSION	25
APPENDIX A	26
APPENDIX B	28

CITATIONS.

Alabama Power Co. v. Ickes, 302 U. S. 464, 483 ..... 9, 12
Beaumont, S. L. & W. R. Co. v. United States, 282 U. S. 74 ..... 23, 24
Bremner v. Mason City & C. L. R. Co., 48 F. (2d) 615 12
Burnet v. Commonwealth Improvement Co., 287 U. S. 415 23
Charles River Bridge v. The Warren Bridge, 11 Pet. 420 8
Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 385 10
Detroit & M. Ry. Co. v. Boyne City, G. & A. R. Co., 286 F. 540 12
Duignan v. United States, 273 U. S. 195 23

Page

Eastland Co. v. *Federal Communications Commission*, 92 F. (2d) 467, 470 17
Fall River Herald News Publishing Co., 5 F. C. C. 377, 382 21
Federal Radio Commission v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266, 285 18
Genesee Radio Corporation, Matter of, 5 F. C. C. 183, 186 21
Intermountain Broadcasting Corp. v. *Federal Communications Commission*, 94 F. (2d) 244 13
W. C. Irvin, Matter of, decided Nov. 1, 1938, not yet reported 21
R. R. Jackman Case, 5 F. C. C. 496, 500 21
Journal Co. v. *Federal Radio Commission*, 48 F. (2d) 461 ..... 15, 17, 19
Louisville Times Company, Matter of, 5 F. C. C. 554, 559 21
Mahler v. *Eby*, 264 U. S. 32 23
Mannich v. *Gardner*, 292 U. S. 48 23
Missouri Broadcasting Corp. v. *Federal Communications Commission*, 94 F. (2d) 623 ..... 23, 25
New Orleans, Mobile and Texas Railroad Co. v. *Ellerman*, 105 U. S. 166, 173-174 8
Pulitzer Pub. Co. v. *Federal Communications Commission*, 94 F. (2d) 249 14
Red River Broadcasting Co. v. *Federal Communications Commission*, 98 F. (2d) 282, cert. denied 59 Sup. Ct. 86 17
Saginaw Broadcasting Co. v. *Federal Communications Commission*, 96 F. (2d) 554 ..... 23, 25
Southland Industries, Inc. v. *Federal Communications Commission*, decided June 15, 1938, not yet reported 16
State of Florida v. *United States*, 282 U. S. 194 23
St. Louis Southwestern Ry. Co. v. *Missouri Pacific R. R. Co.*, 289 U. S. 76, 81-83 12
Sykes v. *Jenny Wren Co.*, 78 F. (2d) 729 13
Technical Radio Laboratory v. *Federal Radio Commission*, 36 F. (2d) 111, 113 19
Tennessee Electric Power Co. v. *Tennessee Valley Authority*, 306 U. S. 118 9

Page

Tri-State Broadcasting Co., Inc. v. *Federal Communications Commission*, decided Nov. 13, 1939, not yet reported 24
Tri-State Broadcasting Co. v. *Federal Communications Commission*, 96 F. (2d) 564 ..... 14, 23
United States v. *Baltimore & Ohio Railroad Co.*, 293 U. S. 454 23
United States v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499 ..... 23, 24
Virginian Ry. Co. v. *United States*, 272 U. S. 658 23
Western Pacific California Railroad Co. v. *Southern Pacific Co.*, 284 U. S. 48 10
WLBG, Inc., (WRNL); Matter of, Richmond, Va., decided March 20, 1939, not yet reported 22
The Yankee Network, Inc. v. *Federal Communications Commission*, decided August 14, 1939, not yet reported 14, 15, 18, 19, 24, 25

STATUTES.

Communications Act of 1934, 48 Stat. 1064:

Sec. 303(f) 2, 18
Sec. 307(b) 18
Sec. 309 17
Sec. 309(a) 16, 17
Sec. 311 17
Sec. 312 2
Sec. 313 19
Sec. 319 ..... 9, 16, 17
Sec. 402(a) 18
Sec. 402(b) 18
Sec. 402(b)(2) 2, 7, 8, 9, 13, 15, 16, 19, 22
Sec. 402(c) 24
Sec. 402(d) 10
Sec. 402(e) 24
Sec. 405 ..... 2, 9, 16

Judicial Code:

Sec. 240(a) 2

Transportation Act of 1920:

Sec. 1 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 499

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR SANDERS BROTHERS RADIO STATION IN OPPOSITION.

OPINIONS BELOW.

The findings of fact, conclusions of law, and order of the Federal Communications Commission are not yet reported, but are found at R. 494-504. The opinion of the United States Court of Appeals for the District of Columbia (R. 572-577) is reported in 106 F. (2d) 321.

JURISDICTION.

The order of the United States Court of Appeals reversing the decision of the Federal Communications Commission was entered January 23, 1939 (R. 578). An order denying the Commission's petition for rehearing was entered August 2, 1939 (R. 578). The petition for a writ of certiorari was filed November 2, 1939. The jurisdiction of this court is invoked by the Federal Communications Commission under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Whether the licensee of an existing broadcast station who will suffer serious and irreparable economic injury as the result of the construction and operation of a new broadcast station in the same community is a "person aggrieved or whose interests are adversely affected" within the meaning of Section 402(b)(2) of the Communications Act of 1934.

2. Whether the failure of the Commission to make a finding concerning the economic effect which the construction and operation of a new station will have upon an existing station in the same community (the issue having been properly raised before the Commission) is reversible error.

STATUTE INVOLVED.

Certain relevant sections of the Communications Act of 1934 (48 Stat. 1064) have been set out in the Petition and Appendix attached thereto (pp. 3-5, 17-27). Other pertinent sections, §§ 303(f), 312 and 405 (47 U. S. C. A. §§ 303(f); 312, and 405) are reprinted in Appendix A, *infra*, pp. 26-28.

STATEMENT.

This case commenced with the filing of an application on January 20, 1936 with the Commission for a construction permit requesting authority to construct and operate a new broadcast station at Dubuque, Iowa (R. 8-23). The appli-

cant was the Telegraph Herald, publisher of a daily newspaper in Dubuque (R. 43). The Commission was unable to determine that the granting of the application would serve public interest, convenience and necessity, and accordingly, on May 1, 1936 designated the application for hearing (R. 23-24).

Respondent has, since 1933, been the licensee of a broadcast station, WKBB at East Dubuque, Illinois, directly across the Mississippi River and part of the same inhabited community (R. 167). On May 14, 1936 respondent filed an application for authority to move the transmitter of the station into Dubuque and to install a more efficient antenna (R. 30-38, 464). On August 18, 1936 respondent requested permission to intervene in the proceedings to be held on the Telegraph Herald application, alleging, among other things:

> "There is insufficient advertising revenue available in the Dubuque area to support an additional radio outlet and the granting of the above described application [of the Telegraph Herald] would therefore seriously impair the type of service now being rendered by Station WKBB." (R. 28)

Respondent's petition for intervention was granted by the Commission September 22, 1936 (R. 29). A petition by the Telegraph Herald to intervene in the proceedings to be held in connection with respondent's application was likewise granted (R. 496).

A consolidated hearing was held before an examiner on the two applications, commencing on September 14, 1936 (R. 39). Both applicants participated fully in the proceedings. Without objection respondent introduced evidence tending to show insufficient commercial support for another broadcast station in the community and that the granting of the application of the Telegraph Herald would seriously impair the ability of respondent to continue operation of Station WKBB in the public interest. This evidence demonstrated that Station WKBB had sustained an operating

deficit of $4,165.85 for the twenty-month period prior to the hearing and that it had not made a profit since it commenced operating in 1933 (R. 191); that of the sixty merchants in Dubuque which the Telegraph Herald relied upon for commercial support of its proposed station, thirty-three had advertised over Station WKBB in the past and eighteen had purchased time on the station in the few months immediately prior to the hearing (R. 213); that from 85 to 90 per cent of the respondent's gross revenue came from Dubuque (R. 192), and that since the good service area of the proposed Telegraph Herald station would be practically the same as the area served by the respondent's station (R. 499, 503), the two stations would directly compete with each other for audience and for the advertiser's dollar. The apprehended adverse effect is readily apparent from testimony showing that the operating expenses of the Telegraph Herald station were estimated at $2,000 *per month* (R. 499) which would have to be obtained almost entirely from Dubuque merchants. Respondent also showed that the Dubuque area was served by broadcast stations located in other cities. At the time of the hearing eleven stations rendered a degree of service throughout all or a part of the area proposed to be served by the Telegraph Herald (R. 69, 439, 448).

On October 31, 1936, the examiner submitted his report recommending that the Telegraph Herald application be denied and that respondent's application be granted (R. 463-485). In recommending denial of the Telegraph Herald application the examiner concluded:

> "The applicant has failed to establish a need for additional daytime service in the area proposed to be served; nor does the applicant propose to render any new, novel or different service from that already being received in that area. The major portion of the area proposed to be served by applicant is now receiving service from an existing facility located at East Dubuque, Illinois. The city of Dubuque is receiving at both its east and west city limits a signal of two milli-

volts per meter or greater from Station WMT at Waterloo, Iowa." (R. 483)

The Telegraph Herald filed exceptions to the examiner's report (R. 486), and both parties requested oral argument before the Commission (R. 488, 489). Oral argument was held before the Broadcast Division on February 11, 1937 (R. 490).

On July 2, 1937, prior to the adoption and publication by the Commission of any findings of fact or conclusions of law, the Commission issued and publicly announced minute entry No. 540 wherein it was stated that public interest, convenience and necessity would be served by the granting of both applications (R. 492-493). On the same date the Commission entered its final order, effective July 27, 1937, granting both applications (R. 494). The "Statement of Facts and Grounds for Decision," the only document purporting to contain findings of fact sufficient to support the decision, was not adopted by the Commission until July 27, 1937, as evidenced by Minute No. 546 entered by the Commission on July 30, 1937 ratifying the order granting both applications (R. 495).

The "Statement of Facts and Grounds for Decision" gave as reasons for granting the applications (1) that both applicants were legally, technically and financially qualified to undertake the necessary construction and operation, (2) that there was a need in the Dubuque area for the services proposed, and (3) that no questions of electrical interference were involved (R. 496-504). The Commission made no finding upon the economic issue. This is conceded by the petition filed in this court (see Petition, p. 7).

Subsequent to the Commission's decision, respondent filed a petition to extend the effective date, a notice and demand that it be served with copies of reports submitted to the Commission by the Law, Engineering and Examining departments relative to the applications, and a petition for rehearing (R. 505-524). All of these petitions were denied (R. 506, 509, 569), and respondent appealed to the United

States Court of Appeals for the District of Columbia (R. 1). No appeal was taken by the Telegraph Herald from the Commission's decision granting respondent's application, and the decision of the Commission is final in this respect.

The Telegraph Herald became a party to the proceedings in the Court of Appeals through the granting of its petition to intervene (R. 4). *Both intervenor and the Commission* filed motions to dismiss the appeals on the *sole* ground that the appeal was not timely presented. At no time did either the petitioner or intervenor move to dismiss for lack of an appealable interest on the part of respondent. The printed record before this court does not disclose that the point was ever raised by either the Commission or the intervenor. In fairness to the Commission, however, it should be added that the point was raised (but for the first time) in the Commission's petition for rehearing in the court below, but the petition is not reprinted in the record. At the same time it should further be added that, in its written argument supporting and attached to the petition, the Commission stated:

> "We do not wish to minimize the importance of a consideration by the Commission of the effect of competition between a proposed new station and existing stations before the Commission grants a license for the proposed new station. Unquestionably, the Commission should, in determining whether the 'public interest, convenience and necessity' will be served by the licensing of a new station in a community, give careful and painstaking consideration to the question of whether the effect of granting the new license will be to defeat the ability of the holder of any one or more outstanding licenses to carry on in the public interest. The Commission is entirely in accord with the view that if the effect of granting a new license would be to defeat the ability of the holder of an outstanding license to carry on in the public interest, the application for the new station should be denied unless there are 'overweening reasons' of a public nature for granting it. And the Commission also believes that it is obviously a stronger case where neither licensee will be financially

able to render adequate service. It is the Commission's endeavor to determine in every case whether service to the public will be benefited or adversely affected by its action on an application."

Among the questions presented by respondent to the Court of Appeals was whether "the Commission erred in failing to make any finding with reference to the economic effect upon the appellant by the granting of the application of the Telegraph Herald" (R. 2).

On January 23, 1939, the court below reversed the Commission's decision granting the Telegraph Herald application (R. 572) and remanded the cause for further proceedings. The court held that the economic issue had been clearly presented to the Commission, and that the Commission's decision was arbitrary and capricious because of its disregard thereof and its failure to make any findings thereon (R. 572-577). The court expressly found it unnecessary to consider other questions raised by respondent.

On February 9, 1939, the Commission filed a petition for rehearing in the court below in which, as above noted, it raised for the first time the questions presented to this court by petition for writ of certiorari. The petition for rehearing was denied August 2, 1939 (R. 578).

ARGUMENT.

I.

The Respondent is a "Person Aggrieved or Whose Interests Are Adversely Affected" by a Decision of the Commission Within the Meaning of Section 402(b)(2) of the Communications Act of 1934.

Whether or not respondent had sufficient standing to appeal to the court below depends upon the language and proper interpretation of Section 402(b)(2) of the Act, providing:

"An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the

Court of Appeals of the District of Columbia in any of the following cases:

"(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

"(2) *By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.*" (Italics supplied)

A. The question whether the licensee of a broadcast station who will suffer economic injury has the right to appeal was not (as above pointed out) presented to the court below until the filing of a petition for rehearing which was denied without opinion. The Commission's petition for rehearing, in raising the point, stated:

> "The Commission did not raise either the aforementioned jurisdictional question or the question of the necessity for making findings when the Commission grants an application under Section 309(a) of the Act because neither of these points was considered to be a *sine qua non* of the Commission's case in this appeal. As to the jurisdictional question, the Commission heretofore took the position that the appellant could not sustain its allegation of economic injury through the establishment of the additional station by the intervener. * * *"

B. The question whether respondent is a "person aggrieved or whose interests are adversely affected by any decision of the Commission" within the meaning of Section 402(b)(2) is not, on the record before this court, of such a nature as to require review.

(1) No conflict of decision is involved.

(2) The decision below is not contrary to decisions of this court. The cases referred to in the Commission's petition (p. 13) (*Charles River Bridge* v. *The Warren Bridge*, 11 Pet. 420; *New Orleans, Mobile and Texas Railroad Co.* v.

Ellerman, 105 U. S. 166, 173-174; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 483; and *Tennessee Electric Power Co. v. Tennessee Valley Authority*, 306 U. S. 118) hold that one who possesses a non-exclusive franchise from a state, who engages in a business not requiring a certificate of public interest, convenience and necessity as a prerequisite to permission to carry on the business, and who is not given a statutory right of appeal has no right to object to financial loss resulting from the lawful activities or operations of a competitor. The competition was held to be *damnum absque injuria*, no legal right having been invaded or threatened. The Communications Act, on the other hand, directs the Commission to grant construction permits only "if public convenience, interest or necessity will be served by the construction of the station" (Section 319), and gives both a right to petition for rehearing and a right to appeal to persons aggrieved or whose interests are adversely affected (Sections 405 and 402(b)(2)). The right of respondent to resist being subjected to financial disaster resulting from arbitrary action of the Commission is based upon and arises from, not common law rights or remedies, but statutory authorization.

In the argument supporting its petition for rehearing filed in the court below the Commission conceded that it had a duty under the Act, in determining whether or not to grant applications for new stations, to ascertain the economic effect which the new station would have upon existing licensees in the same communities, and, if the result of the granting of an application would be to preclude the existing station from operating in the public interest, the application should be denied in the absence of compelling reasons of a public nature to the contrary (see Statement, above).

It is submitted the decision below is not contrary to decisions of this court, but rather is in strict accordance with them. The standard "public interest, convenience or necessity," used at several junctures in Title III of the

Communications Act, was obviously drawn from statutes regulating public utilities and carries, within limitations imposed by Congress and by the subject-matter of regulation, an analogous connotation. In *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U. S. 385, this court held that threatened financial loss to the existing ferry company due to competition from a new ferry gave this court jurisdiction of a proceeding instituted by the existing ferry company seeking an injunction to prevent operation of the competitor's line, that the existing ferry company was a "party in interest" within the meaning of the Transportation Act and had a right to maintain its bill. The court states:

> "Considering *Texas* v. *Eastern Texas R. Co.*, 258 U. S. 204; *Colorado* v. *U. S.*, 271 U. S. 153; *Western P. Cal. R. Co.* v. *So. P. Co.*, 284 U. S. 47, and *Transit Commission* v. *U. S.*, 284 U. S. 360, it must be held that appellant is a 'party in interest' within the meaning of the statute capable of instituting the present proceedings. The bill disclosed that the proposed and permitted action might directly and adversely affect its welfare by changing the transportation situation."

This case is particularly pertinent because Section 402(d) of the Communications Act expressly states that in connection with intervention on appeals the term "interested party" is synonymous with the term "any person who would be aggrieved or whose interest would be adversely affected."

The distinction between rights as they existed at common law and rights created by acts of Congress is recognized in *Western Pacific California Railroad Co.* v. *Southern Pacific Co.*, 284 U. S. 48. There the Western Pacific California Railroad Company brought a bill to enjoin the construction by the respondent of a line of track which would operate in competition with the railroad owned by the Western Pacific California Railroad Company. The respondent had not obtained from the Interstate Com-

merce Commission a certificate of public interest, convenience and necessity and the only question was whether or not the Western Pacific California Railroad Company was a "party in interest" within the meaning of Section 1, paragraph 20, of the Transportation Act of 1920. The opinion of the Supreme Court states as follows:

"Paragraphs 18 to 22, supra, were considered here in Texas & P. R. Co. v. Gulf, C. & S. F. R. Co., 270 U. S. 266, 70 L. ed. 578, 46 S. Ct. 263, and were declared to be part of the general plan by which Congress intended to promote development and maintenance of adequate railroad facilities. It was there said, p. 277: 'It (Congress) recognized that preservation of the earning capacity, and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. See Railroad Commission v. Chicago B. & Q. R. Co., 257 U. S. 563, 66 L. ed. 371, 22 A. L. R. 1086, 42 S. Ct. 232; New England Divisions Case (Akron, C. & Y. R. Co. v. United States), 261 U. S. 184, 67 L. ed. 605, 43 S. Ct. 270; Chicago Junction Case (Baltimore & O. R. Co. v. United States), 264 U. S. 258, 68 L. ed. 667, 44 S. Ct. 317; Railroad Commission v. Southern P. Co., 264 U. S. 331. The Act sought, among other things, to avert such losses.'

"The Texas & Pacific Ry. sought to prevent an unauthorized competitor from building an extension into territory already served by it. Prior to the statute, it could not have maintained such a suit since the competitor's proposed action did not threaten interference with any legal right. No carrier could then demand exemption from honest competition.

"*If, as the court below seems to have assumed, a 'party in interest' must possess some clear legal right for which it might ask protection under the rules com-*

monly accepted by courts of equity, the paragraphs under consideration would not materially aid the Congressional plan for promoting transportation. On the other hand, there was no purpose to permit any individual so inclined to institute such a proceeding. The complainant must possess something more than a common concern for obedience to law. See Massachusetts v. Mellon, 262 U. S. 447, 488, 67 L. ed. 1078, 1085, 43 S. Ct. 597. *It will suffice, we think, if the bill discloses that some definite legal right possessed by complainant is seriously threatened or that the unauthorized and therefore unlawful action of the defendant carrier may directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation. Here, the petitioner was peculiarly concerned; its own welfare was seriously threatened.* It alleged the beginning of an unlawful undertaking by a carrier which might prove deleterious to it as well as to the public interest in securing and maintaining proper railroad service without undue loss. It relied upon the procedure prescribed by the statute to secure an orderly hearing and proper determination of the matter. The disclosures of the bill were enough to show that the respondent's intended action might directly and seriously affect the project which complainant was undertaking in good faith. There was enough to give the latter the standing of a 'party in interest' within intendment of the Act." (Italics supplied)

See also *St. Louis Southwestern Ry. Co.* v. *Missouri Pacific R. R. Co.*, 289 U. S. 76, 81-83; *Detroit & M. Ry. Co.* v. *Boyne City, G. & A. R. Co.*, 286 F. 540; *Bremner* v. *Mason City & C. L. R. Co.*, 48 F. (2d) 615.

Indeed, the distinction between common law and statutory rights is clearly brought out in *Alabama Power Co.* v. *Ickes, supra*, cited by petitioner. This court stated, in distinguishing The Chicago Junction Case, 264 U. S. 258:

> "The Chicago Junction Case (Baltimore & O. R. Co. v. United States), 264 U. S. 258, is not to the contrary. There, suit was brought by certain railroad companies

to set aside an order of the Interstate Commerce Commission authorizing a competing company to acquire a terminal road. Answering the contention that complainants were without the legal interest necessary to entitle them to challenge the order, this court held that the right to sue arose in virtue of a special interest recognized by certain provisions contained in Transportation Act [February 28] 1920 [41 Stat. at L. 456, chap. 91, 49 U. S. C. A. § 71] and under § 212 of the Judicial Code, 28 U. S. C. A. § 45a, which gave any party to a proceeding before the commission the right to become a party to any suit wherein the validity of an order made in the proceeding is involved. In this view the Ellerman Case was thought to be inapplicable."

(3) Whatever may be its abstract general importance, or its importance as applied to other situations, the question as raised by the record in this case is not of sufficient importance or interest to require review by this court. It is not raised properly, clearly or in timely fashion, and the issue is confused by irreconcilable concessions or admissions by the Commission.

C. The court below correctly decided that respondent is an aggrieved person whose interests were adversely affected and had a right to appeal from the decision granting the application of the Telegraph Herald.

(1) The Court of Appeals for the District of Columbia has consistently held, commencing with *Sykes* v. *Jenny Wren Co.*, 78 F. (2d) 729, decided May 27, 1935, that an existing station complaining of economic injury comes within the group described by Section 402(b)(2). In *Intermountain Broadcasting Corp.* v. *Federal Communications Commission*, 94 F. (2d) 244, decided December 6, 1937, the court, per Groner, J., stated:

"In any case where it is shown that the effect of granting a new license will be to defeat the ability of the holder of the old license to carry on in the public interest, the application should be denied unless there are overweening reasons of a public nature for grant-

> ing it. And it is obviously a stronger case where neither licensee will be financially able to render adequate service. This, we think, is the clear intent of section 402(b)(2) of the statute, which provides for an appeal by an aggrieved person whose interests are adversely affected by a decision of the commission granting or refusing an application."

In *Pulitzer Pub. Co.* v. *Federal Communications Commission*, 94 F. (2d) 249, decided December 6, 1937, the same conclusion was affirmed. In *Tri-State Broadcasting Co.* v. *Federal Communications Commission*, 96 F. (2d) 564, decided March 16, 1938, the court below reversed a decision of the Commission upon an appeal by an existing licensee whose interest was similar to that of respondent. No review of the decision was sought in this court. On January 23, 1939, the instant case was decided and on August 14, 1939, the court below, per Miller, J., decided *The Yankee Network, Inc.* v. *Federal Communications Commission*, not yet reported. That case contains a full discussion of the reasons leading the court to hold that an existing licensee alleging economic injury has the right to appeal under Section 402(b)(2).

(2) The construction of Section 402(b)(2) urged by the Commission would radically reduce the scope of the section, and, in the extreme view urged by the Commission, make it a nullity. In the normal situation, the only respects in which an existing licensee can be aggrieved by the action of the Commission in granting an application are through (1) electrical interference and (2) economic injury resulting from competition. A licensee of a station the service area of which would be reduced by electrical interference due to the granting of an application has an interest which in fact may be no greater, and is frequently less than, the interest of a licensee in protection against reduction of his audience and consequently of his revenue through an excessive amount of competition. To construe the Act so as to prohibit appeals from Commission decisions

granting applications for stations which would cause electrical interference to existing stations would be an obvious perversion of the intent of Congress and would run contrary to settled administrative and judicial construction of the Act. See *Journal Co.* v. *Federal Radio Commission*, 48 F. (2d) 461.

The court below commented upon this point in *The Yankee Network, Inc.* v. *Federal Communications Commission, supra*, as follows:

> "This becomes particularly obvious when we consider that to accept the argument of the Commission on this point would not only leave the licensee without opportunity for any relief whatever, even from action so arbitrary as to destroy it, but would deprive section 402(b)(2) of meaning and eliminate it from the Act as effectively as if it were repealed. We cannot impute to Congress an intent to produce an absurd result. 'There is a presumption against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience.' It would require a statute susceptible of no other possible interpretation to persuade us to adopt such a construction in the present case. In order to safeguard the great values of administrative procedure it is necessary to avoid extremes of administrative absolutism."

(3) Since the Commission conceded in the court below that it has the duty, in administering the statutory standard of "public interest, convenience and necessity," to deny applications for new stations (in the absence of overweening reasons) if the operation of such stations would destroy the ability of existing stations in the same community to carry on in the public interest, the Commission's construction of Section 402(b)(2) results in giving the Commission absolute authority to decide such questions as it pleases without review by any court. Clearly such a conclusion was not intended by Congress. Section 402(b)(2) was inserted to afford the opportunity of a review co-ex-

tensive with the issues decided by the Commission in acting upon an application.

(4) Section 405 of the Act provides:

> "After a decision, order or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: *Provided, however*, That in the case of a decision, order or requirement made under Title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, *and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby.*" (Italics supplied)

Thus persons entitled to request rehearings are defined in part by words precisely the same as those defining persons entitled to appeal under Section 402(b)(2). Presumably the language is to be given the same construction in the two sections. To uphold the Commission's interpretation of Section 402(b)(2) means, therefore, that the Commission should henceforth abandon the construction of Sections 405, 309(a) and 319 which it has maintained for a number of years, during which (as in the instant case) it has recognized economic interest as entitling the licensee of an existing station to intervene and become a party in opposition to applications.

The function and purpose of petitions for rehearing has been commented upon by the court below on several occasions. In *Southland Industries, Inc.* v. *Federal Communications Commission*, not yet reported, decided June 15, 1938, the court stated:

> "We have heretofore suggested that rehearings should be availed of by aggrieved persons both for their own protection, and in order to afford opportunity to the

> Commission to correct errors or to hear newly discovered evidence before appeal. This is not and should not be an arbitrary requirement. Whether a petition for rehearing should be filed in a particular case must be decided on the merits as each case arises. However, in our view, its use as an administrative remedy should not be discouraged, but instead should be encouraged 'not to supplant, but to supplement' appellate review."

See also *Eastland Co.* v. *Federal Communications Commission*, 92 F. (2d) 467, 470, and *Red River Broadcasting Co.* v. *Federal Communications Commission*, 98 F. (2d) 282, cert. denied 59 Sup. Ct. 86.

(5) The Commission argues (p. 10) that, since under certain circumstances it can and does grant applications for new stations without a hearing, the licensees of stations affected economically have no right either to be heard or to appeal. Although Section 319 authorizes the granting of an application without a hearing in non-adversary proceedings, it does not, when reasonably interpreted in conjunction with Section 309(a), give such authority when the possibility of injury to existing licensees (whose privileges have already been determined to serve public interest, convenience or necessity) is present. The fallacy of the Commission's argument is demonstrated when we consider the situation of an existing station which will be affected by electrical interference through the granting of another application. The Commission's contention is, in effect, that the licensee of the existing station has no standing to object either before the Commission or the courts. The contrary has long been established in the court below. *Journal Co.* v. *Federal Radio Commission*, 48 F. (2d) 461. The Act provides that a license of a station cannot be revoked without notice and hearing (Section 311). The Commission cannot deny an application for renewal of license without affording the applicant a hearing (Section 309).

The Commission cannot even change the frequency, power, or hours of operation unless it does so after a public hearing (Section 303(f)). In the event of an adverse decision such parties plainly would have a right to appeal under Section 402(b) or under 402(a). The license of a station may be nullified as effectively through electrical interference or destructive competition proceeding from another station as by a formal order of revocation after administrative action. The denial of a right to a hearing in such circumstances would be a clear perversion of Congressional intention. See *The Yankee Network, Inc.* v. *Federal Communications Commission, supra.*

(6) The Commission's argument that since the doctrine of economic injury to competitors cannot be applied to amateur or police stations, it should not be applied to broadcast stations, is not persuasive. The granting of amateur and police stations is a routine matter of non-adversary character. The stations are on a noncommercial basis and economic questions do not arise. With exceptions not relevant to this discussion, *all* amateur and police station applications are granted, within the bands assigned to those services. The Commission is under no necessity of choosing among applicants and is not under a mandate "to provide a fair, efficient, and equitable distribution of radio service" among the several states and communities, as it is with respect to broadcast stations (Section 307(b) as amended June 5, 1936).

(7) The Commission's contention that if the court below is correct, it may be compelled to deny a renewal application of one station because of alleged adverse economic effect on another station in the same community, is somewhat chimeric. Many factors other than economic are involved in acting on renewal applications. The Commission is dealing with licensees, not applicants for new facilities, and, as this court said in *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266, 285, "the equities of existing stations undoubtedly demand consid-

eration." Unless strong and compelling reasons are shown which lead to a contrary result, a licensee has a continuing right to a renewal of license. *Technical Radio Laboratory* v. *Federal Radio Commission*, 36 F. (2d) 111, 113. "Where a broadcasting station has been constructed and maintained in good faith, it is in the interests of the public and common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons." *Journal Co.* v. *Federal Radio Commission, supra*, at p. 463. "It is equally apparent that the granting of a license by the Commission creates a highly valuable property right, which, while limited in character, nevertheless provides the basis upon which large investments of capital are made and large commercial enterprises are conducted. As it is the purpose of the Act to secure the use of the channels of radio communication by private licensees under a competitive system, those licensees must be protected in that use, not merely from unlicensed stations and unlicensed operators, but from improper activities of licensed stations and operators and from arbitrary action by the Commission, itself, in the exercise of its regulatory power." *The Yankee Network, Inc.* v. *Federal Communications Commission, supra.* Although the Commission has recognized the economic issue for years in dealing with new applications, it has not yet found it necessary to apply the principle to renewal applications.

(8) The Commission argues that a construction of Section 402(b)(2) which permits the licensee of an existing station alleging destructive competition to appeal from a decision granting an application for a new station runs counter to Section 313 of the Act against monopolies. The Commission overlooks the fact that its theory would tend to foster rather than curtail the existence of monopolies. The language of the court in *The Yankee Network, Inc.* v. *Federal Communications Commission, supra,* is a direct answer to the Commission's contention:

"The method of uncontrolled competition argued for by the Commission in the present case is in fact one way of creating monopolies. If it were allowed to go on unrestrained, according to its theory of non-reviewable arbitrary power, none but a financial monopoly could safely exist and operate in the radio broadcasting field. The Commission justifies its action in the present case, and justifies its contention in theory, by assuming that if a chain, operating several broadcasting stations, or a company which owns both newspapers and broadcasting stations, is able to carry one of them financially, even though the latter station is not able to support itself, then the latter cannot protest against destructive competition. The result of this policy might well be to destroy or frighten from the radio broadcasting industry, any independent station attempting to operate on its own resources; and to leave in the field only monopolies which were sufficiently supported financially to withstand the destructive competition which might result from arbitrary, careless action upon the part of the Commission in the granting of new station licenses. It was undoubtedly with just such considerations of possible arbitrary administrative action in mind that Congress provided for judicial review under the Communications Act on behalf of any person aggrieved or whose interests are adversely affected; as it likewise did under the Transportation Act. In each instance the remedy is statutory in character, and in each instance designed to protect rights and equities also deriving from statutes in derogation of the common law."

(9) The Commission relies upon the administrative construction of the statute in support of its position. The administrative construction of the Act is directly contrary to the theory urged in the petition. Almost without exception, licensees alleging economic conflict have been permitted to participate fully in the proceedings before the Commission. Either the Commission itself has made them respondents or, upon request, has granted intervention. The economic issue has frequently, either expressly or by neces-

sary implication, been inserted in notices of hearing. On occasions, adverse economic effect upon existing stations has been given as a reason for denial of an application. In the *Fall River Herald News Publishing Company Case*, 5 F. C. C. 377, 382, a ground for denial was stated as follows:

> "The record does not show that sufficient commercial support could be reasonably expected to enable the existing station to continue its operations and at the same time to sustain the applicant in its proposed operations."

In the *R. R. Jackman Case*, 5 F. C. C. 496, 500, involving the question of transfer of control, one ground for denial was stated as follows:

> "Station WREN, Station WDAF, and Station KMBC, which serve substantially the same area, now compete on equal terms, each having the same day and night power. If the transfer were to be approved by the Commission, Stations WREN and WDAF would be owned and controlled by the same interests and would compete with Station KMBC, thus creating a situation in the service area of these stations in which, instead of three equally powerful mutually competitive stations, there would be one station having as a competitor the owner and operator of two equally powerful stations. This would obviously place Station KMBC at a serious competitive disadvantage as well as materially reduce competition in the area."

See also *In the Matter of Genesee Radio Corporation*, 5 F. C. C. 183, 186; *In the Matter of The Louisville Times Company*, 5 F. C. C. 554, 559.

Appendix B contains a list of cases where the Commission, in disposing of applications, has considered the issue of economic effect upon existing stations. Typical instances of this are the *Irvin Case*, Docket 4686, decided November 1, 1938, where it was stated:

> "As it affirmatively appears that Station KGNC is operating at a substantial profit and the merchants who have indicated their intention of using the facilities of either of the proposed stations are in the main merchants who do not now use the facilities of Station KGNC, it is apparent that the operation of a local broadcast station would not result in a loss of a substantial amount of the advertising support of Station KGNC and would not adversely affect the ability of this station to render adequate broadcast service in this area."

In the *WLBG Case*, Docket 4681, decided March 20, 1939, the Commission stated:

> "From a consideration of all of the above evidence, the Commission is not convinced that this intervener has shown that Station WRTD will be deprived of any revenue from the proposed operation much less to a point to impair its ability to operate in the public interest. * * * It is seen from the foregoing that the intervener has made no showing, which is entitled to serious consideration, that its finances will be adversely affected through the proposed operation."

Appendix B also contains a list of cases where the Commission considered the question, in passing upon applications for new or better facilities in communities already having stations, whether or not there was adequate commercial support.

It is respectfully submitted that respondent is a "person aggrieved or whose interests are adversely affected" within the meaning of Section 402(b)(2) of the Act.

II.

The Failure of the Commission to Make a Finding of the Economic Effect Which the Granting of the Application of the Telegraph Herald Would Have Upon the Respondent's Station Was Arbitrary and Capricious and Constituted Reversible Error.

The position of the Commission in the court below was that it made all the findings required by law to sustain its action and that, since respondent had not demonstrated it would be economically injured by the operation of the proposed Telegraph Herald station, the Commission was not required to make a finding upon that subject. For the first time in the Commission's petition for rehearing and now again in this court, the Commission urges that it is not required to make any findings of fact when it grants an application. The argument that no findings of any character are required comes too late. This court will not review questions which are not shown by the record to have been raised in the court below or presented in a timely manner. *Duignan* v. *United States*, 274 U. S. 195; *Burnet* v. *Commonwealth Improvement Co.*, 287 U. S. 415; *Minnich* v. *Gardner*, 292 U. S. 48.

Even if the question were properly before this court for review, certiorari should be denied because the contention is without merit. Administrative bodies are required to make findings of fact when acting in a quasi-judicial capacity. *United States* v. *Baltimore & Ohio Railroad Co.*, 293 U. S. 454; *State of Florida* v. *United States*, 282 U. S. 194; *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499; *Beaumont, S. L. & W. R. Co.* v. *United States*, 282 U. S. 74; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658; *Mahler* v. *Eby*, 264 U. S. 32; *Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 96 F. (2d) 554; *Missouri Broadcasting Corp.* v. *Federal Communications Commission*, 94 F. (2d) 623, cert. denied, 303 U. S. 655; *Tri-State Broadcasting Co., Inc.* v. *Federal Communications*

Commission, 96 F. (2d) 564; *The Yankee Network, Inc.* v. *Federal Communications Commission, supra; Tri-State Broadcasting Co., Inc.* v. *Federal Communications Commission*, not yet reported, decided November 13, 1939. This court stated in *Beaumont, S. L. & W. R. Co.* v. *United States, supra:*

> "Complete statements by the Commission showing the grounds upon which its determination rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

Not only the necessity of findings but the manner of making them was referred to by this court in *United States* v. *Chicago, M., St. P. & P. R. Co., supra*, as follows:

> "The difficulty is that it has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency."

Section 402(e) of the Act makes findings of fact, if supported by substantial evidence, conclusive upon the parties. Section 402(e) requires the Commission to file in the Court of Appeals for the District of Columbia within thirty days after the taking of an appeal copies of all papers and evidence presented to the court, and, within thirty days thereafter, to file a full statement in writing of the facts and grounds for its decision as *found* and given by it. It is plain that the duty of making findings of fact in adversary or contested proceedings was imposed upon the Commission by the Act.

It seems hardly necessary to argue that the Commission erred in failing to make a finding, one way or the other, concerning the economic effect of the proposed Telegraph Herald station upon respondent. The statutory standard

of public interest, convenience and necessity involves the making of such a determination, as the Commission has conceded. The *Yankee Network, Inc.* v. *Federal Communications Commission, supra.* Speaking of the necessity of making a finding upon the availability of commercial support, the Court of Appeals stated:

> "Even though there may be evidence in the record—upon this we do not pass—from which the Commission may have concluded that the intervenors would receive adequate commercial support * * *, this does not excuse the Commission from its duty of making a finding as the result of its consideration of that evidence." *Saginaw Broadcasting Co.* v. *Federal Communications Commission, supra,* at p. 563.

A mere finding by the Commission that the public interest, convenience and necessity will be served by its action is not sufficient under the Act in adversary proceedings. *Saginaw Broadcasting Co.* v. *Federal Communications Commission, supra; Missouri Broadcasting Corp.* v. *Federal Communications Commission, supra.*

CONCLUSION.

Wherefore, it is respectfully submitted that the petition for a writ of certiorari should be denied.

LOUIS G. CALDWELL,
REED T. ROLLO,
PERCY H. RUSSELL, JR.,
Counsel for Respondent.

December 1, 1939

APPENDIX A.

Sec. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

* * * *

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with:

Sec. 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however,* That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of

said hearing the Commission may affirm, modify, or revoke said order of revocation.

(b) Any station license hereafter granted under the provisions of this Act or the construction permit required hereby and hereafter issued, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: *Provided, however,* That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity to show cause why such an order of modification should not issue.

Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: *Provided, however,* That in the case of a decision, order, or requirement made under Title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceed-

ings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing or modifying the original determination, shall be subject to the same provisions as an original order.

APPENDIX B.

Cases Where the Commission, in Disposing of Applications, Has Considered the Issue of Economic Effect Upon Existing Stations.

In re Applications of Red Oak Radio Corp. (KICK), Carter Lake, Iowa, and The Palmer School of Chiropractic (KICK), Davenport, Iowa, 1 F. C. C. 163, 164, 165.

In re application of Red River Broadcasting Co., Inc. (KGFK), Moorhead, Minnesota, 1 F. C. C. 215, 216.

In the Matter of Wichita Falls Broadcasting Co. (KGKO), Wichita Falls, Texas, 3 F. C. C. 386, 393.

In the Matter of Dorrance D. Roderick, El Paso, Texas, 3 F. C. C. 616, 622.

In the Matter of Gulf Coast Broadcasting Co., Corpus Christi, Texas, 4 F. C. C. 103, 106.

In the Matter of Beaumont Broadcasting Association, Beaumont, Texas, 5 F. C. C. 139, 142.

In the Matter of Genesee Radio Corp., Flint, Michigan, 5 F. C. C. 183, 186.

In the Matter of Standard Life Insurance Company of the South, Jackson, Mississippi, 5 F. C. C. 349, 352.

In the Matter of Fall River Herald News Publishing Company, Fall River, Massachusetts, 5 F. C. C. 377, 382.

In the Matter of The Northern Corporation (WMEX), Boston, Massachusetts, 5 F. C. C. 468, 471-472.

In the Matter of R. R. Jackman, et al. (WREN), Lawrence, Kansas, 5 F. C. C. 496, 500.

In the Matter of The Louisville Times Company, Louisville, Kentucky, 5 F. C. C. 554, 559.

In the Matter of Dorrance D. Roderick, El Paso, Texas, 5 F. C. C. 563, 569.

In the Matter of John S. Allen and G. W. Covington, Jr., Montgomery, Alabama, 5 F. C. C. 631, 635-636.

In the Matter of KQV Broadcasting Co. (KQV), Pittsburgh, Pennsylvania, 5 F. C. C. 584, 593.

In the Matter of The Metropolis Company, Jacksonville, Florida, decided October 25, 1938.

In the Matter of Voice of Longview (KFRO), Longview, Texas, decided May 31, 1939.

In re Application of Civic Broadcasting Corp., Syracuse, New York, decided October 5, 1939.

Cases Where the Commission Considered the Question of the Adequacy of Commercial Support in Passing Upon Applications for New or Better Facilities in Communities Already Having Stations.

In the Matter of Quincy A. Brackett Lewis B. Breed, and Edmund A. LaPort, d/b as Connecticut Valley Broadcasting Company, Springfield, Massachusetts, 2 F. C. C. 326, 328.

In the Matter of William A. Schall, Omaha, Nebraska, 2 F. C. C. 360, 364.

In the Matter of Edward Hoffman, St. Paul, Minnesota, 2 F. C. C. 394.

In the Matter of Eugene DeBogory & Mildred English, d/b as Dallas Broadcasting Company, Dallas, Texas, 2 F. C. C. 402, 409.

In the Matter of W. R. Cramer & G. A. Anderson, trading as Omaha Broadcasting Company, Omaha, Nebraska, 2 F. C. C. 418, 420.

In the Matter of G. D. Goff, Tampa, Florida, 2 F. C. C. 585, 587.

In the Matter of F. W. Atkinson, Watsonville, California, 3 F. C. C. 137, 140, 141.

In the Matter of Union Tribune Publishing Company, San Diego, California, 3 F. C. C. 451, 452, 453.

In the Matter of WLBG, Incorporated (WPHR), Petersburg, Virginia, 3 F. C. C. 666, 671, 672.

In the Matter of Continental Radio Company, Toledo, Ohio, 4 F. C. C. 422, 426.

In the Matter of William F. Maag, Jr., Youngstown, Ohio, 5 F. C. C. 324, 326.

In the Matter of Juan Piza, San Juan, Puerto Rico, 5 F. C. C. 327, 330.

In the Matter of Standard Life Insurance Company of the South, Jackson, Mississippi, 5 F. C. C. 349, 352.

In the Matter of Arthur Lucas, Savannah, Georgia, 5 F. C. C. 464, 467.

In the Matter of Press-Union Publishing Company, Atlantic City, New Jersey, decided March 6, 1939.

In the Matter of Kentucky Broadcasting Corporation, Louisville, Kentucky, decided February 6, 1939.

In the Matter of M. C. Reese, Phoenix, Arizona, decided November 29, 1939.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 499.

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT.

LOUIS G. CALDWELL,
REED T. ROLLO,
DONALD C. BELLAIR,
PERCY H. RUSSELL, JR.,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 499.

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT.

Opinions Below.

The opinion of the United States Court of Appeals for the District of Columbia (R. 470-7) is reported in 106 F. (2d) 321. The order of the Federal Communications Commission granting the application of the Telegraph Herald, entered July 2, 1937 without opinion, is found at R. 406-7. The Commission's Statement of Facts and Grounds for

Decision, adopted July 30, 1937 (4 F. C. C. 392), is found at R. 408-16. The Commission's order denying respondent's petition for rehearing without opinion, entered December 8, 1937, is found at R. 468.

Jurisdiction.

The judgment of the Court of Appeals reversing the Commission's decision was entered January 23, 1939 (R. 477). The Commission's petition for rehearing was denied August 2, 1939 (R. 478). The Commission's petition for a writ of certiorari was filed November 2, 1939, and was granted December 11, 1939. The jurisdiction of this Court rests on Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

The respondent appealed from a decision of the Commission granting the application of the Telegraph Herald for a construction permit authorizing the construction and operation of a new radio broadcast station in the same territory in which respondent operates a station. The questions presented are:

1. Is respondent "a person aggrieved or whose interests are adversely affected" by the decision of the Commission, within the meaning of Sec. 402(b)(2) of the Communications Act, so that the Court of Appeals had jurisdiction to entertain the appeal?

2. Was the Commission, under the circumstances of this case, obligated to make findings of fact on the issue whether sufficient economic support is available in the community where the proposed new station is to be located to permit both stations to continue in operation and to render service meeting the standard of public interest, convenience, or necessity?

3. Did the Commission err in considering certain confidential memoranda submitted to it by the Engineering, Law and Examining Departments, the

memoranda not having been received in evidence nor served upon respondent?

Statute Involved.

The pertinent provisions of the Communications Act of 1934 (Act of June 19, 1934, c. 652, 48 Stat. 1064, as amended by the Act of June 5, 1936, c. 511, 49 Stat. 1475; and as amended by the Act of May 20, 1937, c. 229, 50 Stat. 189; 47 U. S. C., Secs. 151, *et seq.*) are Secs. 3(h) and (o), 4(j) and (l), 301, 303(a) to (k), 307, 308(b), 309, 310, 312, 319, 325(b) and (c), 326, 402, and 404. The sections not found in the Appendix to the Commission's brief are reprinted in Appendix D.

Statement.

The statement set forth in the brief of the Commission is adequate for the decision of the issues involved in this case, except in the following respects:

1. Respondent's petition to intervene in the proceedings held in connection with the application of the Telegraph Herald, filed on August 18, 1936, was granted by the Commission on August 20, 1936 (R. 24). The petition for intervention alleged, among other things:

> "There is insufficient advertising revenue available in the Dubuque area to support an additional radio outlet and the granting of the above-described application would therefore seriously impair the type of service now being rendered by Station WKBB" (R. 23).

The Telegraph Herald is the only non-sectarian daily newspaper published in Dubuque (R. 61, 143, 384).

2. The motion of the Commission to dismiss respondent's appeal was based *solely* upon the ground that the appeal had not been timely presented.[1] The sole point made by the Commission with respect to respondent's appealable inter-

[1] Appendix C, p. 110.

est, *prior* to the lower court's decision on January 23, 1939, was made in the Commission's brief and argument on the merits, and is sufficiently disclosed by the following excerpt from the Commission's petition for rehearing in that court, filed February 9, 1939:

> "* * * As to the jurisdictional question, the Commission heretofore took the position that the appellant could not sustain its allegation of economic injury through the establishment of the additional station by the intervener. In other words, the Commission heretofore assumed, *arguendo*, that financial loss as a result of competition from a broadcast station authorized by order of the Commission, if proved, would constitute a basis for an appeal under Section 402(b)(2) of the Act, and argued that the appellant in this case has failed to prove its alleged economic injury. The jurisdictional point now raised is, assuming *arguendo* that the appellant can prove that it will suffer pecuniary loss from competition with the new station of the intervener, such loss is *damnum absque injuria.*"[2]

3. On July 30, 1937, respondent filed with the Commission a notice and demand, in which it alleged upon belief that, after oral argument and prior to the decision of the Broadcast Division of the Commission in this case on July 2, 1937, various memoranda or reports on the case were presented by the Engineering, Law and Examining Departments to the Broadcast Division for its consideration in making or arriving at a decision; and that respondent had had no opportunity to be confronted with the facts therein contained or to make answer thereto, or, in the case of the Engineering Department's report, to cross-examine the Engineering Department's representative with respect thereto. Respondent, expressing its intention to file a petition for rehearing before the full Commission and a desire to be apprised of all matters, including these three reports, which were considered by the Broadcast Division in making

[2] Appendix C, p. 112.

a determination upon the case, made demand that it be served with any and all of these reports (R. 418). This demand was refused without opinion by the Broadcast Division on August 18, 1937 (R. 420).

In its petition for rehearing before the full Commission, filed August 11, 1937, respondent stated, among other things:

> "2. Petitioner is informed and believes and upon such information and belief alleges as a fact that the Broadcast Division in arriving at its decision considered certain confidential reports which were submitted by the Examining Department, the Law Department, and the Engineering Department of the Commission, as more fully set forth and described in Petitioner's Notice and Demand filed with the Broadcast Division on July 21, 1937, (sic) which is incorporated by reference herein. Said reports, if presented for consideration as alleged herein and in said Notice and Demand, were never served or made available to Petitioner as provided in Rule 106.28, and Petitioner, in being denied an opportunity to be confronted with the facts contained in said reports and to make answer thereto, has been deprived of a full and fair hearing as required by due process of law and the Constitution of the United States, Fifth Amendment." (R. 421-2)

and asked

> "2. That the Commission issue a rule requiring the Broadcast Division to produce and make available to Petitioner any or all of the several reports heretofore described in said Notice and Demand filed July 29, 1937." (sic) (R. 432)

This petition was denied by the full Commission without opinion on December 8, 1937 (R. 468).

Respondent assigned, among its reasons for appeal, that the Commission erred in denying its request that it be served with copies of these reports, and in considering these reports without serving them upon respondent and giving it opportunity to make answers thereto (R. 2). After tak-

ing the appeal, respondent suggested a diminution of the record, the relevant portion of which is reproduced in the lower court's opinion (R. 475-6). In reply the Commission simply stated that the reports

> "do not themselves constitute evidence in the record nor were they so considered by the Commission in making its decision." (R. 476)

A similar statement was made in the Commission's brief in the court below (R. 477). The statement that such reports were submitted to and considered by the Broadcast Division in arriving at its decision is not controverted; the Commission asserts only that they were not "used as evidence" (R. 477).

4. The respondent sustained a net loss of $4,165.85 for the year 1935 and $475.28 for the first eight months of 1936. It has not operated at a profit since its station went on the air in 1933 (R. 160, 370). The Telegraph Herald estimated that its operating expenses would approximate $2,000 per month (R. 411), but the only evidence of advertising commitments for its proposed station consisted of the testimony, hearsay in character, that sixty merchants in Dubuque had evidenced a desire to advertise (R. 44). Thirty-three of these sixty merchants had used respondent's station in the past, and eighteen merchants purchased time on respondent's station during 1936 (R. 1). The only finding of economic support made by the Commission, other than general characterizations of the trade area, was that "A large number of advertisers have signified that they would be interested in using the station as an advertising medium" (R. 411).

5. Both respondent's station and the station proposed by the Telegraph Herald will render satisfactory service over approximately the same area (R. 412, 415). The rural service rendered by respondent and proposed to be rendered by the Telegraph Herald is of significance because

the program plans of the Telegraph Herald emphasized agricultural broadcasts (R. 412). As revealed by measurements of a radio engineer, ten broadcast stations render a satisfactory service at various points within this area (R. 365).[3] Two of the stations are licensed to agricultural organizations and others also cater to the farm population (R. 57, 58, 202, 309, 331, 334). The stations serving this area in whole or in part are (in addition to WKBB) WGN, WMAQ, WENR-WLS, and WBBM, Chicago, Illinois; WMT, Cedar Rapids, Iowa; WHO, Des Moines, Iowa; WSUI, Sioux City, Iowa; WOI, Ames, Iowa; and WTMJ, Milwaukee, Wisconsin (R. 365). Except for the service rendered by respondent's station, the Commission made no finding concerning available broadcast service.

6. A comparison of the program plans of the Telegraph Herald with the service rendered by respondent's station shows that the proposed service will duplicate the service now available from Station WKBB (Cf. R. 163-70 and R. 371-2 with R. 47-53 and 351-60). The examiner, in recommending that the application of the Telegraph Herald be denied, commented upon the program plans as follows:

> "2. The applicant [the Telegraph Herald] has failed to establish a need for additional daytime service in the area proposed to be served; nor does the applicant propose to render any new, novel, or different service from that already being received in that area. * * *" (R. 398)

[3] The Standards of Good Engineering Practice state in Table II that a signal of one-half millivolt per meter is considered satisfactory in towns having a population up to 2,500 (Standards of Good Engineering Practice, approved June 23, 1939, effective August 1, 1939, Sec. 1, Table II).

Summary of Argument.

"Public interest, convenience or necessity" is the substantive law of Title III of the Act. The question as to what parties have the right to appeal under Sec. 402(b)(2) is a separate question.

1. Under the broad standard "public interest, convenience, or necessity", sub-standards must be formulated, either as regulations or as principles applied in actions on applications. These sub-standards may be with respect to (a) matters which *must* be taken into account, or (b) matters which, in the Commission's expert discretion, *may* be taken into account. Commission determinations of the latter class will ordinarily not be set aside unless shown to be arbitrary and capricious. Petitioner, however, contends that the matter of economic injury may *not* be taken into account, *i.e.*, it falls outside the scope of sub-standards permitted by "public interest, convenience or necessity".

Petitioner has no standing to raise this issue, having raised the point for the first time in this Court and having heretofore expressly concurred in the lower court's view.

Once the radio spectrum has been sub-divided into bands of frequencies, and these bands have been allocated among the several radio services, the issuance of most licenses, permits and other authorizations is merely a routine matter involving no process of selection. The principal classification of stations in which the process is involved is broadcasting.

In applying the process to broadcasting, the whole field of sub-standards possible within the limitations of scientific facts may be classified under three heads (a) fair, efficient and equitable distribution of radio service as prescribed by Sec. 307(b), (b) economic factors, and (c) character and past performance of competing applicants. Much of the last-mentioned is excluded by Sec. 326 forbidding censorship of programs.

Sub-standards to foster location of stations where adequate support is available are at least justified, and probably required, by the mandate of fair, efficient and equitable distribution. The Commission itself has taken this view. Other provisions of Title III at least authorize, and perhaps require, such sub-standards, including (a) the public utility history and connotation of "public interest, convenience or necessity," and its necessary meaning as applied to the licensing of stations to communications carriers, (b) the direction in Secs. 309(a) and 319(a) that an applicant's financial ability to construct a station be taken into account, and (c) the implications with respect to *actual*, not theoretical, preservation of competition, both in situations such as exist in Dubuque (the Telegraph-Herald being the only non-sectarian newspaper in Dubuque) and in other cities for which the facility becomes unavailable if used in Dubuque.

For many years, with inconspicuous exceptions until recently, the Commission has given effect to respondent's view in its administrative interpretation of "public interest, convenience or necessity", in its actions on applications under Secs. 309(a), 310(b), 319(a) and 325(c), and in performing its legislative functions under Sec. 303.

Consequently, in applying the standard "public interest, convenience or necessity," the Commission either (a) *must* take the economic factor into account where, as in this case, the point is properly raised and strongly supported by evidence, or (b) it may take it into account and, in view of its recognition of the issue as legitimate both in this case and in its administrative interpretation for years, has acted arbitrarily and capriciously in failing to give it effect.

2. Respondent is a "person aggrieved or whose interests are adversely affected" within Sec. 402(b)(2).

The statute confers the right of appeal on *some* class or classes of persons. It must not be interpreted so as to produce an absurd, ineffective or inefficient result. The de-

scription of persons who may appeal is not made subject to "public interest, convenience or necessity".

Petitioner has no standing to urge that respondent is not within the description, having first made the point (and then not in its present form) on petition for rehearing in the court below.

The context shows that Congress intended the description to have a substantial scope such as contended for by respondent, not limited to "legal aggrievement". This is particularly true of Secs. 402(d) and 405 which use the same phraseology and 309(a) as interpreted by the Commission for many years. The same is demonstrated by Sec. 5 of the Radio Act of 1927 (providing for appeals from the Secretary of Commerce to the Commission) from which the description was originally taken; by the legislative history of Sec. 16 of the Radio Act of 1927; by its defects and other circumstances leading to amendment July 1, 1930; and by the substantial re-enactment of the amended Sec. 16 as Sec. 402(b) to (f) of the Communications Act of 1934 after and in the light of repeated decisions by the court below during the intervening period.

Consideration of the actual nature and extent of the adverse effect leads to the same conclusion. Whether the injury caused by a new station be technical (interference) or economic, its nature is the same, *i. e.*, loss of listeners. The essential character of a broadcast station, as defined by law, is that it is licensed for "the dissemination of radio communications intended to be received by the public". When its public is decreased, it is adversely affected in its most vital feature. The loss of listeners resulting from a new station in the same community may be as great as that resulting from interference, or greater. Sound policy requires that persons having so real an interest should have a public forum for expression of their opposition rather than to be driven into other channels. The statute has been in effect almost ten years without occurrence of the extreme situations predicted by Petitioner.

3. If the Commission was required in this case to take into account the question whether Dubuque can support a second station, the Commission's obligation to make a finding on the issue seems axiomatic.

Petitioner construes Sec. 309(a) as giving the Commission unlimited discretion to *grant* applications without hearing and as not requiring it to hold any hearing except as a condition precedent to denial; as therefore not requiring any findings where it grants an application even where a hearing has been held; and as not requiring any findings when it denies an application unless and until an appeal is taken and then not until 60 days after the notice of appeal has been filed. It contends that it is not the responsibility of the Commission (which it assumes to be a purely executive agency) to afford due process, but of the courts.

The Commission's administrative interpretation of Sec. 309(a) since the early days of the Federal Radio Commission until recently, expressed in a series of codified regulations continuously in force, has been diametrically opposed to its present contentions. This interpretation has been that it may *not* grant an application without hearing unless it has first found *both* that the granting will serve public interest, convenience or necessity *and* that the granting will not aggrieve or adversely affect the interests of any licensee or pending applicant. Otherwise, it has designated the application for hearing and has regularly permitted interested parties (including licensees of existing stations and pending applicants having only an economic interest) to participate. Its *regular* practice since February, 1931, has been to make formal findings in all cases where a controversial hearing has been held and in all cases subject to appeal, whether granting or denying the application.

The hearing required by Sec. 309(a) must be adapted to the consequences that are to follow, and to the attack and the review to which the decision is subject. Even when a statute is not specific in providing for notice and hearing, such requirements will be read into it to make it conform to the demands of due process.

Sec. 309(a) is easily susceptible of the interpretation given it by the Commission until recently. Other sections of the Act cannot be read intelligibly without such an interpretation, notably Secs. 402(b) to (f) governing appeals, Sec. 405 governing petitions for rehearing, and certain provisions in Secs. 4(j), 5(e) and 409(a), (c) to (e). The legislative history of Sec. 309(a) contradicts any such intention by Congress as Petitioner now imputes to it. Petitioner's suggestion that aggrieved persons should resort to original suits in courts of competent jurisdiction is disingenuous.

Extensive as is the federal regulatory power over radio communication, reaching even to the power to forbid engaging therein and severely to restrict those who are permitted to engage therein, it must still be exercised consistently with the requirements of due process of law.

4. The consideration by the Commission of confidential reports and memoranda in reaching a decision in the instant case deprived respondent of the full and fair hearing to which it is entitled under Sec. 309(a) of the Act and the due process clause in the Fifth Amendment to the Constitution.

ARGUMENT.

I.

It Was the Duty of the Commission, in Passing Upon the Application for Construction Permit for a New Station in this Case, to Take into Account the Ability of the Community to Support an Additional Station.

"Public interest, convenience or necessity" is the substantive law of Title III of the Communications Act of 1934, prescribed by Congress to guide the Federal Communications Commission

a) in the exercise of its principal delegated legislative powers enumerated in Sec. 303, and

b) in granting or denying various kinds of applications for permits and licenses under Secs. 307(a), 309(a), 310(a) and (b), 319 and 325(c), and in compulsory modification of licenses under Sec. 312(b).[1]

The question as to what persons were intended by Congress to have the right to participate in the process by which the substantive law is interpreted and applied, either before the Commission or in the reviewing courts, *is a separate question*, to be considered under the next heading.

(a) *Analysis of the Issue in the Light of the Standard.*

As applied to the regulation of radio communication, "public interest, convenience or necessity" began life in 1927 as a relatively shapeless nebula. Its outer contours were defined by this Court in 1933, as follows:

[1] It is assumed that no significance attaches to the several variations in the wording of the standard as it appears in these sections. Separate consideration need not be given to Sec. 312(b). It was introduced into the statute in 1934, having no counterpart in the Radio Act of 1927, and has virtually never been employed. It is logically grouped with revocations of license, covered by Sec. 312(a).

> "In granting licenses the Commission is required to act 'as public convenience, interest or necessity requires.' This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. * * * The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services, and, where an equitable adjustment between States is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities. * * *"[2]

It remained (and still remains) to give more definite shape and content to the nebula by a gradual process of subdividing and resolving it into sub-standards, expressed either

(a) in legislative form, by formal regulations, or

(b) by the case method, in which principles or rules are announced from time to time, as required by fact-situations presented by applications.

This important function was entrusted by Congress to the administrative process with the hope and expectation that, through the accumulation of experience and expertness, the Commission would evolve a satisfactory regulatory code. The advantage of having such a standard administered in this way is, as recently pointed out by this Court, that

> "* * * it serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy. * * * Underlying the whole law is recognition of the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors. * * *"[3]

[2] Federal Radio Commission v. Nelson Bros., 289 U. S. 266, 285.

[3] Federal Communications Commission v. Pottsville Broadcasting Company, decided Jan. 29, 1940.

One of the principal dangers is that the very vagueness of the standard and the supposed complexities of regulation will be used as cloak and justification for official favoritism.

Figuratively, the standard "public interest, convenience or necessity" may be considered to embrace a circular area marked out by Congress on a field representing the total possible extent of radio regulation. The map thus created comprises three zones:

(1) an inner zone of matters which *must* be taken into account by the Commission in its application of the standard;

(2) an intermediate zone of matters which the Commission, in its discretion, and as its experience and expertness dictate, *may* take into account, and

(3) an outlying zone which the Commission may *not* invade.

What matters fall within the inner and the outer zones is to be determined from specific directions given the Commission by Congress in the Act, and from necessary implications and corollaries of the standard deducible from the context and other trustworthy sources. The administrative agency's errors of commission and omission with respect to these two zones raise questions of law reviewable on appeal.

The intermediate zone, however, is one of administrative discretion in which sub-standards formulated by the Commission, even though having the force of law, will not ordinarily be set aside by the courts because of doubts as to the wisdom of the Commission's determinations. To enjoy immunity from judicial scrutiny, however, the sub-standards must be applied in good faith and with uniformity during the period in which they are in effect. They must *not* be devices to be employed or disregarded at the whim of the Commission, to justify a given result in one case and to permit a contrary result in others. Otherwise, the

power of the reviewing court to correct arbitrary and capricious deteminations may be invoked.

For the first time in the history of this case, and contrary to an administrative interpretation extending back at least to early in 1929, the Commission now contends that, in applying the standard of "public interest, convenience, or necessity", it has no power to do what it has done for years, or to do what to a large extent (although incompletely) it did in this case, namely, to consider whether adequate economic support is available for an additional station in a given community. In other words, it asserts that overnight this has become a matter falling within the outer zone.

In reply, respondent states that the matter must be regarded as either

a) falling within the inner zone and requiring the Commission's attention, or

b) falling within the intermediate zone and presenting so clear an instance of arbitrary and capricious conduct as to call for correction.

This is on the assumption that, at this late stage in the proceedings and on the record now before the Court, the Commission has any standing to raise the issue.

(b) *Petitioner's Standing to Raise the Issue.*

In this case, as shown by the record, the Commission stamped the issue as legitimate from the outset,

a) by granting respondent's petition to intervene in the proceedings before it, the petition being based on apprehended economic injury (R. 22, 24),

b) by permitting respondent fully to participate in the proceedings and, without objection from either Commission counsel or counsel for the applicant, to develop evidence on the issue.

c) by partial (but incomplete) recognition of the issue in its decision (R. 408) and by failure to disclaim the issue therein, although explicitly presented to it by the record,

d) by confining its motion to dismiss respondent's appeal to the ground of alleged tardiness,[1]

e) by confining its argument on the merits in the court below to the contention that respondent did not have an appealable interest because it had "failed to prove its alleged economic injury" (Appendix C, p. 112),

f) by confining its argument on motion for rehearing in the court below to the contention that respondent had no appealable interest but at the same time stating to the court the following:

> "We do not wish to minimize the importance of a consideration by the Commission of the effect of competition between a proposed new station and existing stations before the Commission grants a license for the proposed new station. Unquestionably, the Commission should, in determining whether the 'public interest, convenience and necessity' will be served by the licensing of a new station in a community, give careful and painstaking consideration to the question of whether the effect of granting the new license will be to defeat the ability of the holder of any one or more outstanding licenses to carry on in the public interest. The Commission is entirely in accord with the view that if the effect of granting a new license would be to defeat the ability of the holder of an outstanding license to carry on in the public interest, the application for the new station

[1] Appendix C, p. 110. The Commission's contention on this point was disposed of by the Court of Appeals while this case was pending, in Saginaw Broadcasting Co. v. Federal Communications Commission, 96 F. (2d) 554; Southland Industries, Inc. v. Commission, 99 F. (2d) 117; Woodmen of the World v. Commission, 99 F. (2d) 122.

should be denied unless there are 'overweening' reasons of a public nature for granting it. And the Commission also believes that it is obviously a stronger case where neither licensee will be financially able to render adequate service. It is the Commission's endeavor to determine in every case whether service to the public will be benefited or adversely affected by its action on an application.

"It is also the Commission's position that whenever the Commission, in considering an application for a new station does not so apply the standard of public interest, convenience and necessity as required by the statute, this court, *upon an appeal properly taken*, may and should set aside the decision of the Commission. * * *"

We submit that the Commission, having at all times fully agreed with the lower court's interpretation of the law on the substantive side, can not be heard now to complain that the lower court did not adopt a view which was never urged upon it.

As stated by this Court in *Public Service Commission* v. *Havemeyer*, 296 U. S. 506, at p. 519:

"The commission first raised the point in the Circuit Court of Appeals. If worthy of notice, it should have been made when the appeal was taken to the district court. The appeal is in the nature of a suit to have the order adjudged invalid. The petition for appeal is the complaint. The commission answered on the merits. Thereby it admitted respondents' capacity to initiate the proceeding. * * *"

See also *Duignan* v. *United States*, 274 U. S. 195; *Burnet* v. *Commonwealth Improvement Co.*, 287 U. S. 415; *Munich* v. *Gardner*, 292 U. S. 48, and the concurring opinion of Mr.

Appendix C, pp. 113-4. This is the document from which is drawn the partial quotation appearing in footnote 11 at p. 36 of Petitioner's Brief. The same language was presented by the Commission in its brief in the lower court, and was quoted in the court's opinion, in Yankee Network, Inc. v. Commission, decided Aug. 14, 1939, 107 F. (2d) 212, as well as in the opinion in this case (R. 473).

Justice Brandeis in *B. & O. R. Co.* v. *United States*, 298 U. S. 349, at p. 388, wherein he stated:

> "* * * Federal appellate courts will not in civil cases, upon review of the judgment of the trial court, consider any objection not seasonably presented below; and an objection first presented in a petition for rehearing which has been denied is not seasonably presented unless in connection with the denial that objection was specifically passed upon. This rule is of general application. It governs the appellate court's action whether the objection raises a constitutional question, or relates to a matter of lesser dignity. * * *"

(c) *Analysis of the Standard Generally.*

This Court is not called upon to consider or predict the meaning of "public interest, convenience or necessity" in its many legislative and quasi-judicial ramifications, or as applied to the countless situations which conceivably may call for its application. Certain assertions in Petitioner's Brief, however, tend to exaggerate the complexities and the difficulties, and call for comment.

We may agree with petitioner that

> "* * * The essential purpose of the Act is to secure to the public the maximum benefit from the use of available radio frequencies. * * *" (Petitioner's Brief, p. 18)

and that the standard is to be construed accordingly. The radio spectrum is limited and its use must be regulated in order to avoid interference and to assure an orderly and efficient exploitation of its possibilities.

Accordingly, the regulatory agency must be invested with

> a) broad legislative powers such as are conferred by Sec. 303, including the powers to classify radio stations, to prescribe the nature of the service to be rendered by each class, to assign bands of frequencies to the various classes, to determine the location of

classes of stations, to regulate the kind of apparatus used, to make regulations to prevent interference, to establish areas or zones to be served, and to make regulations "to carry out the provisions of this Act," and

b) broad quasi-judicial powers to limit the number of licensees and to select and reject applicants *for those classes of stations and in those bands of frequencies where the demand exceeds the available facilities*, as well as to prescribe the frequency, power, hours of operation, area to be served, and other conditions subject to which a permit or license is granted.

The Radio Act of 1912 failed to invest the Secretary of Commerce with such powers. To remedy these vital defects was far and above the principal reason for the series of bills to amend or replace that statute, beginning early in 1921 and culminating in the Radio Act of 1927. This is uncontrovertably demonstrated by the legislative history of the bills and the statements made in explanation of their meaning and purpose by their managers in both Houses of Congress.[6]

A basic and prerequisite task in this scheme of regulation is to subdivide the radio spectrum into bands of frequencies, and to assign these bands for use by the several kinds of radio services. To a considerable extent this task is performed, not by the Commission, but by general international treaty to which the United States is a party.[7]

It is true that, at first blush, there seems to be a bewildering assortment of radio services or classes of stations (as indi-

[6] See Appendix A, Parts I and IV, and particularly the remarks of Mr. White of Maine and Mr. Dill of Washington at pp. 48-55.

[7] The principal treaty is the International Telecommunications Convention, Madrid, 1932, and the General Radio Regulations annexed thereto, as revised at Cairo in 1938, particularly Art. 7, Treaty Series No. 948.

cated at pp. 19-20 of Petitioner's Brief). On closer inspection they resolve themselves into comparatively few major classes, such as

1. Stations engaged in carrying on public correspondence, by radiotelegraph, radiotelephone, etc.

2. Stations engaged in the dissemination of radio communications intended to be received by the public (e. g., broadcasting), and various auxiliary services.

3. Stations engaged in furthering safety of life and property at sea, in the air, or in connection with emergency services such as police and fire protection, forestry, etc.

4. Stations engaged in carrying on private correspondence, chiefly amateurs, and

5. Stations engaged in experimentation.

Only the first two of the foregoing present any serious problem of limitation in the number of licensees, or of choosing from among an excessive number of applicants, and of these the second (broadcasting) contributes over ninety per cent of the controversies.*

As of June 30, 1939, 63,251 radio station licenses were outstanding. Of these, however, 53,558 were amateur licenses, 3,756 were for radio stations on board ship, 1,824 were in aviation services, 1,536 were in various emergency services, and 372 were experimental. On the other hand, there were only 778 standard broadcast stations, of which 39 were under construction, and 1104 stations engaged in

* This may easily be verified by reference to the Commission's published reports of its decisions, of which 5 volumes covering the period from July 11, 1934 to June 30, 1938 are available.

fixed public or public coastal operation.[9] Only 39 new broadcast stations were authorized in 1938.[10]

With respect to most of these, *no process of selection is involved* and the issuance of licenses is a routine matter. For example, certain bands of frequencies are set aside for amateurs, and all comers who are citizens of the United States and who have passed certain examinations are granted licenses. Similarly, the installation of radio equipment is compulsory by law on ships and on aircraft (with exceptions). In any event, in these and other services, substantial bands of frequencies are reserved for their use and virtually all comers are licensed.

With respect to most applications, the Commission has found it possible to delegate their disposition to members of its staff. For example, the Secretary handles all applications for amateur and ship licenses, and all applications for aircraft licenses or renewal thereof where the applicant has been the holder of a license within the preceding year. A board of four employees of the Commission handles by far the greater portion of the remaining classes of applications.[11]

There is no justification for asserting, therefore, that "public interest, convenience, or necessity" has the same meaning or presents the same problems when applied, for example, to the routine licensing of 53,558 amateurs to

[9] Fifth Annual Report of Federal Communications Commission to Congress, Gov. Pr. Off., 1939, pp. 73-84, 172, 208-9. The figure of 1104 stations engaged in carrying public correspondence really represents a far smaller number of actual stations, due to the practice which obtained at that date of counting each frequency used at each location as a separate station. For example, 800 fixed public "stations" now represent only 86 licenses. As of June 30, 1939 there were only 15 radiotelegraph companies, 4 radiotelephone companies, and 1 company in the fixed public press service, licensed by the Commission.

[10] *Ibid.* p. 172.

[11] Administrative Order No. 2 of the Federal Communications Commission as amended Nov. 8, 1939, effective Dec. 1, 1939. Release No. 37281.

roam at will within broad bands of frequencies, and the far-from-routine issuance of a construction permit to establish a new broadcast station to disseminate radio communications to be received by the public in a single limited and highly congested band of frequencies. The Commission has never considered, and does not now actually consider, that the same test applies.

(d) *Analysis of the Standard as Applied to the Licensing of Broadcast Stations:*

We begin with the knowledge that the standard, because of interference and related considerations, is to be employed in the process of limiting the number of persons who may engage in broadcasting in the band 550 to 1600 kc. and in selecting a few from the many. What standards, deducible from the Act, will serve as a basis for choice? The whole field of sub-standards available within the framework and limitations dictated by scientific facts and principles may be summarized as follows:

1. Those designed to bring about compliance with the mandate in Sec. 307(b) that

> "* * * the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.";

2. Those designed to insure good service through the stability resulting from taking economic factors into account;

3. Those designed to sift competing applicants on the basis of

> a) character and other qualifications (excluding alien interests and persons adjudged guilty of violation of the anti-trust laws),

b) past or proposed compliance with technical standards, and

c) past or proposed program service.

Congress appears to have excluded 3(c) from the scope of the Commission's regulatory power, by denying to the Commission "the power of censorship over the radio communications or signals transmitted by any radio station."[12] In any event, neither it nor the other tests suggested in the third group are of importance in this case, since the situation is not one of two or more applicants competing for the same facility.

The importance of the first group of sub-standards cannot be over-stated. One of the principal complaints voiced in Congress in the debates preceding enactment of the Radio Act of 1927 was that, due to the inadequacies of the prior statute, an inequitable geographical distribution of stations, with excessive grouping in certain centers and insufficient facilities in others, had developed.[13] This complaint found expression in the mandate to the licensing authority contained in the second paragraph of Sec. 9[14] of the Radio Act of 1927 in which appears substantially the same language as in Sec. 307 (b) in its present form. The belief in Congress that during its first year the Commission had failed to perform its duty resulted in the more rigid and detailed mandate in the amendment of March 28, 1928.[15] This amended section, with a slight modification, was carried forward into Sec. 307(f) of the Communications Act of 1934 but, by amendment on June 5, 1936, the original,

[12] Sec. 326. For expression of Congressional intent as to the scope of this section, see Appendix A, IV, 3, p. 55.

[13] See remarks of Mr. White, Appendix A, IV, 2, pp. 49, 51, and of Mr. Dill, p. 52.

[14] 44 Stat. 1166.

[15] 45 Stat. 373. It was this amended Sec. 9 of the Radio Act of 1927 which was before this Court in Federal Radio Commission v. Nelson Bros., 289 U. S. 266, 269, 270.

more flexible, language was restored. For a long period, during which the rigid and detailed mandate was in effect, the Commission maintained an elaborate set of regulations, known as the quota system,[16] to give it effect. It now has no regulations or sub-standards of any description *other than economic* which purport to give form or context to the present law.

Some sub-standards must, however, be consciously or unconsciously applied if the clear intent of Congress is to be carried out. Otherwise, because of inexorable technical limitations, the improvident grant of too much to one State or community will prevent another State or community from having its fair and equitable share. The Commission probably has its choice of several theories on which to premise sub-standards, any one of which, if fairly applied, would not be disturbed by the courts. One of these would be strict observance of comparative populations involved, perhaps a formula in which weight is given to both population and area. Another, equally legitimate, it is submitted, is the economic ability of the community and its environs to support a given amount of broadcast facilities. The logic of this latter alternative is supported by the fact that, under Sec. 307(b), the prescribed distribution must be not only fair and equitable, but *efficient;* by the fact that a city of a given population lying in an area economically tributary to one or more larger cities and receiving service from stations located in those cities affords less support than a city of the same population which is itself the center of such an area; and by the actual present distribution of stations. The foregoing is not abstract logic. The Commission's recent report to Congress, under the heading of "Further Study of Service Rendered by Standard Broadcast Stations," and the sub-heading "Geographical Distribution of Facilities," after quoting Sec. 307(a) and (b), states:

[16] *Ibid.*, pp. 272-3, 280-1.

> "The evidence shows that different cities have different shapes and sizes, as well as variations in the ability to support transmission facilities, and therefore it is believed that the best method of obtaining equitable distribution to various communities within a State is to adopt a general rule that if a facility is to be licensed in a community, it should be adequate to serve that community and its sphere of economic and social influence. The criterion of whether a certain class of station should be assigned to a particular community must include a consideration of the ability of the community and its social and economic sphere of influence to support a radio station in such a manner that it can render efficiently a good service."[17]

It further appears:

> "There are now 379 cities and towns in the continental United States which have only 1 radio station"

and 88 towns having a population above 25,000 (including several having a population over 100,000), and not located within any metropolitan district, having only one station. There are 12 towns having a population in excess of 25,000, and 101 having a population between 10,000 and 25,000 that have *no stations*.[18]

Some light on the question is furnished by the debates in Congress. The chief point of dispute between the House and the Senate in 1926 was whether the licensing authority should, in the first instance, be the Secretary of Commerce

---

[17] Fifth Annual Report of the Federal Communications Commission to Congress, p. 182. A footnote states that the material under the heading was compiled from the "Report of the Committee on Proposed Rules and Regulations Governing Standard Broadcast Stations, April 1, 1939." *Ibid.*, p. 175. We invite the Court's attention further to Appendix B in which, at great length, "Financial and Other Statistical Data relating to Standard Broadcast Stations" is set forth by tabulation and chart. *Ibid.*, pp. 210-284.

[18] *Ibid.*, 178-180. Dubuque has a population of 41,679 (R. 410) and the area receives a measure of service from a number of stations located in other cities (R. 398).

or a commission. Senator Dill, the proponent of the latter view which ultimately prevailed, stated in support of his thesis that the commission

> "* * *, should be composed of men * * * who will administer the law from the standpoint of the public's interest, and particularly with a view to the future development of the radio art for the social and economic good of our people * * *."

He opposed giving the authority to the Secretary of Commerce because

> "* * * he does not and he cannot give consideration to these great problems affecting the economic and social life of the country * * * and then to provide, as the bill provides, fair, efficient, and equitable radio service. * * *" (Appendix B, pp. 53, 54)

In the House, Mr. White, in calling attention to the excessive congestion of stations in certain cities, stated:

> "* * * Stations so centered detract from the value of each other and interfere with the highest quality of service. * * *" (*Ibid.*, p. 51)

Independently of Sec. 307(b), there is evidence in that Act that the Commission is to take the economic factor into account in interpreting and applying the standard "public interest, convenience or necessity".

First, may be mentioned the standard itself. It has an obvious public utility history and connotation. This, we concede, is not compelling so far as broadcasting is concerned, in view of Sec. 3(h).[19] It *is* important in that "public interest, convenience, or necessity" as used in Title III must be deemed to import the same meaning as Sec.

[19] Sec. 3(h), after defining "common carrier" or "carrier", provides that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier".

214(a)[20] in Title II as applied to applications by radio communication carriers for new or modified licenses representing the equivalent of new lines or extensions of lines. Otherwise, the basic purposes of Title II would be completely thwarted. We mention this as indication that the standard in Secs. 307(a), 309(a) and 319 has a full economic content when applied to radio stations engaged in carrying public correspondence for hire; and, in such cases, is not amenable to the narrow scope ascribed to it in Petitioner's Brief.[21]

Secondly, may be mentioned the very significant requirement in Secs. 308(b) and 319(a) that all applications

> "'shall set forth such facts as the Commission by regulation may prescribe as to the * * * financial * * * ability of the applicant to construct and operate the station.'"[22]

It will not be contended that by this language Congress meant to award radio licenses to the wealthiest applicants in every case where a choice is to be made between two or more applicants. "Financial responsibility" must have a

---

[20] Sec. 214(a) makes "a certificate that the present or future public convenience and necessity require or will require, etc." prerequisite to the construction by a carrier of a new line or of an extension of any line, etc. By its terms it applies only to wire carriers, although Title II as a whole applies to wire and radio carriers alike.

[21] See Mackay Radio & Telegraph Co. v. Federal Radio Commission, 97 F. (2d) 641, an appeal from a decision of the Commission reported in 2 F. C. C. 592, in which the Commission denied applications of the Mackay Co. for modification of its fixed public service licenses of point-to-point telegraph stations to add Oslo, Norway, as a primary point of communication. The Commission held that the proposed new circuit, while increasing the revenues of applicant, would decrease the revenues of all other established competing carriers and would decrease the total revenues of the American owned companies. On appeal, the Commission vigorously and successfully upheld its reasoning.

[22] Sec. 319(a). Sec. 309(a) substitutes "qualifications" for "ability" and "operate" for "construct and operate".

meaning more consonant with a sound public interest. The applicant of modest means should also be eligible upon a showing that, with the economic support that may reasonably be expected for his proposed station, he will be able to construct and operate it successfully. If this be of concern to the Commission, in order not to confine radio privileges to the wealthy, then it must also be the Commission's concern that the premise upon which such a license was granted be not undermined by later action which in effect gives the license to the wealthier person.

Such considerations are particularly relevant in a case such as is now presented to this Court. The Telegraph-Herald Co. publishes the only non-sectarian newspaper in Dubuque. It strenuously opposed the original establishment of respondent's station in the Dubuque area, and unsuccessfully appealed from the Commission's original grant.[23] It consistently refused to carry WKBB's programs in its newspaper, although publishing daily and without charge programs carried by stations in other cities (R. 388). In the present situation, there is at least competition between the newspaper and the radio station for audience and for advertising. If the Telegraph Herald should be awarded a license for a second station, and if, as the evidence indicates, the Dubuque area will not support a second station, the result will be a concentration of ownership of *both* means of mass-communication in one concern.

Petitioner's Brief argues implications drawn from Secs. 311 and 313 of the Act. On their face, the scope and purposes of these sections are so foreign to the situation now before the Court, that argument seems superfluous.[24] Petitioner overlooks the fact that to inflict excessive competition in broadcasting on one community is, in view of the

---

[23] Telegraph Herald Co. v. Federal Radio Commission, 66 F. (2d) 220. The court held that Telegraph Herald Co., being neither licensee nor applicant, had no appealable interest.

[24] For a discussion of the legislative history and purpose of these sections, see Lovett, The Antitrust Provisions of the Radio Act, 2 Jour. Radio Law 1.

limited total of facilities, either to deprive a larger community somewhere else of adequate competition or to deprive still other communities of any station at all.

For self-evident reasons respondent is unable to cite any decisions of this Court as being directly in point. Title III of the Communications Act of 1934, as applied to broadcasting, is *sui generis*. Any decisions having to do with statutes regulating common carriers may be distinguished on that account and to that extent, just as cases cited in Petitioner's Brief having to do with statutes regulating other very different fields of activity are readily distinguishable. The principal cases, tending to support respondent, all drawn from the public utility field, are sufficiently collected in the lower court's opinion in *Yankee Network, Inc.* v. *Federal Communications Commission*, 107 F. (2d) 212, at pp. 219 and 224.

Considerations drawn directly from the Act itself, in the light of its legislative history and the Congressional intent, lead us to urge that, in applying the criterion "public interest, convenience or necessity" to the establishment of new broadcast stations, the Commission is *required* to take the economic factor into account,—at least in cases such as the present, where the issue was timely and properly raised and the probability of inadequate support is shown by substantial evidence. In other words, we submit, the matter falls within the inner of the three zones to which reference was made at the beginning of this portion of our argument.

If, however, it be determined that this contention goes too far, we submit that the matter at least falls within the second zone, the zone in which the Commission has the power to take the economic factor into account. There is no basis for contending that it lies in a field which the Commission may not invade. Petitioner's warning (p. 32) that our doctrine leads to rate-regulation and program control (*i.e.* censorship) may be met if and when such a case arises.

In either alternative, it becomes important to examine the Commission's administrative interpretation of "public

interest, convenience, or necessity" with reference to the economic factor. If it is demonstrated, as we believe it is under the next sub-heading, that the interpretation for which we contend prevailed for a period of years under the Radio Act of 1927, the re-enactment by Congress of the same phraseology in the Communications Act of 1934 may be deemed to import into the statute the meaning which the criterion had had in practice.[25] If the matter be regarded as falling within the second zone, but the Commission has persistently adhered to a given sub-standard for years, departing from it only in this or at most a few isolated cases, only to return to the same sub-standard in other cases, its action in this case must be regarded as arbitrary and capricious, and beyond the power delegated to it by Congress.

> "* * * The Commission's error arose from a failure to recognize that when it prescribed a maximum reasonable rate for the future it was performing a legislative function, and that when it was sitting to award reparation it was sitting for a purpose judicial in its nature. In the second capacity, while not bound by the rule of *res judicata*, it was bound to recognize the validity of the rule of conduct prescribed by it and not to repeal its own enactment with retroactive effect. It could repeal the order as it affected future action, and substitute a new rule of conduct as often as occasion might require, but this was obviously the limit of its power, as of that of the legislature itself."[26]

In the light of the position taken by the Commission in the lower court, *i.e.*, that it has the power to take the ability or inability of a community to support an additional station into account but that parties adversely affected by its so doing have no standing to question its decisions, we are justified in concluding that what the Com-

---

[25] See cases cited in Petitioner's Brief, p. 34.

[26] Arizona Grocery Co. v. Atchison etc. R. Co., 284 U. S. 370, 389.

mission is actually seeking is an uncontrolled discretion in applying the standard. This conclusion is fortified by the knowledge that, as pointed out by the court below in *Yankee Network, Inc.* v. *Commission*, 107 F. (2d) 212, the Commission

> "expanded its contention to include any possible grievance or affectation of interest, electrical, economic or otherwise". (p. 214)

(c) *The Commission's Administrative Construction of the Standard.*

In the light of the actual facts, the repeated assertion in Petitioner's Brief (at pp. 12 and 34) that our contention is contrary to the administrative interpretation placed upon the statute by the Commission is at least surprising, particularly when coupled with the implication that Petitioner's interpretation has prevailed over the years. It has forced upon us the burden of proving a negative, at the expense of a bulky Appendix B (pp. 59-109) in which the accuracy of Petitioner's assertion is, we believe, completely demolished.

The Commission's expression, in a decision rendered as recently as January 10, 1940, quoted at length in Petitioner's Brief (pp. 30-31), is extremely revealing, principally in that, at this late date, the Commission should have deemed it necessary or advisable to make public its supposedly well-established views on the subject-matter, and to have issued a press release on the subject.[27] No earlier instance of any pronouncement even remotely parallel to this recent expression is cited and, with inconspicuous and isolated exceptions to which attention is called in Appendix B, none can be. It would be expected that at least something more than a pronouncement made while this case is pending in Court would be produced to support so broad a claim.

[27] Press Release 38427, Jan. 9, 1940.

We meet first Petitioner's challenging declaration that the Commission (including its predecessor) has

> "never denied a license to one otherwise qualified on the ground that his competition may injuriously affect an existing license". (p. 34)

Precisely such a case was *In re Fall River Herald News Publishing Co.*, 5 F. C. C. 377, 381, 382, decided May 11, 1938, some ten months after the decision in the instant case. The recitals of fact as set forth in the two decisions are so nearly identical that they have been arranged in parallel columns in Appendix B (pp. 85-89). The Commission's findings in the *Fall River* case included the following:

> "* * * There is nothing in the testimony before the Commission to encourage the belief that two local broadcast stations in Fall River would find sufficient financial support to sustain themselves, nor that the existing station could survive the reasonably expected rivalry of the Fall River Herald News Publishing Company, and since the performance of the existing station is acceptable and sufficient the application for permit to construct another station should be denied."

Its "Grounds for Decision" included the following:

> "The record does not show that sufficient commercial support could be reasonably expected to enable the existing station to continue its operations and at the same time to sustain the applicant in its proposed operations."

It is obvious from the face of the decision that the foregoing was the principal ground relied upon.

In an early decision of the Federal Radio Commission, rendered January 31, 1929 (*Richmond Development Corp.*, Docket 246, not reported), the same result was reached on reasoning tied in with the requirement of fair and equitable distribution (Appendix B, pp. 79-80). The same reasoning again appears in the Commission's most recent re-

port to Congress.[28] Over the years, a large number of decisions have been rendered first by the Federal Radio Commission and later by the present Commission, in which the issue was accepted as legitimate and was decided in the light of the facts, although in most cases favorably to the applicant (Appendix B, pp. 80-85, 89-92). The same or analogous economic considerations have entered into many decisions involving the Commission's consent to transfers of license under Sec. 310(b), and actions on applications for permits to "export" programs under Sec. 325(b) and (c) (Appendix B, pp. 92-96).

The most signal instance of giving effect to the economic factor, however, remains to be cited. As pointed out in the Commission's most recent report to Congress, 38.5 per cent of the total land area of the United States (containing a 1930 population of nearly 10,000,000) does not receive satisfactory primary service in the daytime from even one broadcast station, while at night 56.9 per cent of the area (containing a population of over 21,000,000) does not receive such service from even one station. The areas receiving satisfactory service from more than one station are materially less. Yet the Commission, by its legislative determinations under Sec. 303 during 1939, has barred the way to the sole method of achieving any substantial betterment of these conditions, namely, by permitting clear channel stations to increase their power in excess of 50 kw. Amendment of its regulations to permit the increase, unobjectionable from the point of view of interference or other technical considerations, was rejected principally, if not solely, because of apprehended competitive effects on other classes of broadcast stations (Appendix B, pp. 97-106).

Similarly, economic factors have played an impressive role in the formulation of the Commission's regulations governing international broadcasting and television (*Ibid*;

[28] Fifth Annual Report of Federal Communications Commission, Nov. 15, 1939, p. 182, quoted under the previous subheading.

pp. 104-106), and in the exercise of its inquisitorial functions with respect to broadcasting (*Ibid.*, p. 107).

With this record of actual performance as background, we may note the actual present inclination of the Commission to visit retribution on those who raise an issue heretofore regarded as proper for over ten years. On February 6, 1939, the Commission granted a construction permit to the Kentucky Broadcasting Corporation to establish a local station at Louisville, Kentucky. On October 10, 1939, while this station was in course of construction, the Commission, without hearing, granted an increase in hours of operation from daytime to limited time to a station of comparable power and classification at New Albany, Indiana, across the Ohio River. On October 30, 1939, the Kentucky Broadcasting Corporation petitioned for a rehearing on the New Albany decision, alleging that it would result in such severe loss of revenue as to impair the petitioner's service, and would destroy its ability to render proper service in the public interest. On November 20, 1939, the Commission not only denied the petition for rehearing, but, after reciting that "such allegations cast serious doubts upon the petitioner's financial qualifications to construct and operate its proposed station", it issued an order requiring the Kentucky Broadcasting Corporation to show cause, on or before December 5, 1939, why its construction permit should not be recalled.[29]

A fitting anti-climax to the foregoing is furnished by the fact-situation and contentions submitted to this Court within the past month by the Commission itself. In *Fly* v. *Heitmeyer*, decided January 29, 1940, the "two other applications for the same facilities" referred to in the Court's opinion were in reality simply two other applications for a station in the same city, one of them for the same frequency assignment and the other for an entirely different assignment, involving no interference question and no com-

[29] Federal Communications Commission Release No. 37603, Nov. 20, 1989.

petitive aspect other than economic. The other application for the same frequency assignment, however, was withdrawn *prior* to the date on which Heitmeyer resorted to the District Court to compel compliance with the mandate.[30] Nevertheless, as indicated in the Court's opinion, the remaining two applications, although for different facilities, were treated as "rival applications" and the Commission's proposal, complained of on appeal, was to reopen the record and to take new evidence on their comparative ability to satisfy the standard. The Commission has, therefore, sought and obtained a favorable result in this Court to try, in major measure at least, an issue which it now urges it has no power to consider.[31]

---

[30] See the Commission's brief in this Court in Fly v. Heitmeyer, p. 5. Actually, the Commission's notices of hearing, reopening the proceedings, were dated April 29, 1938; the other application for the same facilities was withdrawn May 17, 1938; and Heitmeyer instituted his proceedings in court May 31, 1938. The decision of the Court of Appeals, reversed by this Court, was rendered May 24, 1939.

[31] In its brief filed in this Court in Federal Communications Commission v. Pottsville Broadcasting Company, decided Jan. 29, 1940, the Commission stated the following:

> "* * * The judgment of accountants and financial experts is needed to ensure that a portion of the radio broadcast spectrum is not being appropriated by an applicant who is financially irresponsible or whose probable revenues are so insufficient that the venture cannot be sanctioned. * * * (p. 29)
>
> * * * * * *
>
> "We have shown (*supra*, pp. 29-30) that the Commission's consideration of an application for a construction permit or a station license requires the solution of a number of engineering, economic, social, and other problems. * * *" (p. 38)

II.

Respondent Has the Right to Appeal Under Sec. 402(b)(2).

Sec. 402(b) (2) provides for an appeal

> "By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application."

Obviously, Congress intended that *some* class or classes of persons have the right to appeal from a Commission decision granting an application for a construction permit. An intent to produce an absurd, ineffective, or inefficient result may not be imputed. *United States* v. *Powers*, 307 U. S. 214. Petitioner contends for such a result when it asserts only those may appeal "who suffer legal aggrievement or whose legal interests are affected by the Commission's action" (Brief, p. 38), meaning, apparently, to confine the right of appeal to those who at common law, or independently of the Communications Act, would have the right to resort to the courts, and to exclude even licensees whose existing stations would be adversely affected by interference.

Petitioner's alternative contention (if we understand correctly) is that the description "any other person aggrieved or whose interests are adversely affected" is somehow subject to and bounded by the criterion "public interest, convenience or necessity". It is nowhere made so by the statute. The right to participate in a legal controversy to oppose a certain result depends, it is true, upon threat of injury to the participant, but the nature of the injury does not limit or define the substantive issues, nor do the latter necessarily limit or define who is injured.

(a) *Petitioner's Standing to Raise the Question.*

Petitioner granted respondent's petition to intervene on the ground of apprehended economic injury (R. 24), under procedural regulations which limited intervention to parties

having "a substantial interest in the subject matter of the hearing" (Appendix B, p. 74). It permitted respondent thereafter fully to participate in the proceedings on *all* issues, and later to file a petition for rehearing under Sec. 405. It failed to urge lack of appealable interest, in its motion to dismiss (Appendix C, p. 110), and first raised the point now presented in its petition for rehearing on the lower court's decision (*ibid.* p. 111). See *Public Service Commission* v. *Havemeyer*, 296 U. S. 506, 519; *B. & O. R. Co.* v. *United States*, 298 U. S. 349, concurring opinion of Mr. Justice Brandeis at p. 388; *Duignan* v. *United States*, 274 U. S. 195; *Burnet* v. *Commonwealth Improvement Co.*, 287 U. S. 415; *Minnich* v. *Gardner*, 292 U. S. 48.

In the *Chicago Junction Case*, 264 U. S. 258, at p. 268, this Court stated:

> "The plaintiffs may challenge the order because they are parties to it. The Judicial Code, § 212 (originally the Commerce Court Act, June 18, 1910, chap. 309, 36 Stat. at L. 542, Comp. Stat. § 1005), declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied. For, otherwise, there would in some cases be no redress for the injury inflicted by an illegal order. Moreover, the fact of intervention, allowed as it was, implies a finding by the Commission that the plaintiffs have an interest. In the proceeding before the Commission, they opposed by evidence and argument the granting of the application. This they did as of right. For under the rules of practice, adopted by the Commission pursuant to Par. 1 of § 17 of the Interstate Commerce Act, the intervener becomes a party to the proceeding, entitled, like any other party, to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel. The intervention must be preceded by an order of the Commission granting leave; and leave can be granted only to one showing interest. No case has been found in which either this court, or any lower court, has denied to one who

> was a party to the proceedings before the Commission the right to challenge the order entered therein. • • •"

See also *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, 479.

(b) *The Context.*

The description in Sec. 402(b) (2) appears in two other provisions of the Communications Act and, by a long-continued process of administrative construction dating back to May 26, 1927, has been read into another. The provisions are Secs. 402(d) governing intervention in appeals, Sec. 405 governing petitions for rehearing before the Commission, and Sec. 309(a) governing hearings before the Commission.

Much of Petitioner's reasoning is traceable to an excessively literal reading of Sec. 309(a). Since separate questions of statutory construction, of administrative interpretation, and even of validity are involved, we shall reserve it for separate discussion under Part III.[1] At this juncture we shall confine ourselves to observing that under a series of codifications and revisions of its regulations governing practice and procedure, dating back to June 25, 1930 (and actually back to May 26, 1927), until August 1, 1939, the Federal Radio Commission and the present Commission continuously maintained in force a provision in substance as follows:

> "104.6. In cases where the application is proper upon its face but the Commission is unable to determine, without a hearing on the merits, that the granting of such application, either in whole or in part, would serve public interest, convenience, or necessity, and that the granting of such application, either in whole

[1] The same applies to the several other provisions in the Act showing the intent of Congress that the right to participate in the original hearings before the Commission be liberally accorded to interested persons.

> or in part, *would not aggrieve or adversely affect the interests of any licensee, or any person having a pending application*, the Commission will designate the same for hearing and the following procedure will govern: * * * "[2] (Italics supplied)

During the entire period licensees of existing stations apprehending economic injury were regularly permitted to participate either as respondents or as intervenors. Congress, by Sec. 604(a) of the Act,[3] provided that the regulations of the Federal Radio Commission should continue in effect until modified or repealed. How does Petitioner construe the language "aggrieve or adversely affect the interests" in the Commission's own regulations?

Sec. 405 provides that application for rehearing of a decision, order or requirement under Title III

> "* * * may be made by any party or any person aggrieved or whose interests are adversely affected thereby. * * * "

and that

> "* * * In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. * * * "

Does Petitioner claim that the above description in Sec. 405, couched in almost identical language with that in the appeal section, is confined to

---

[2] Appendix B, pp. 72-3. The above represents the precise language which was in effect from Dec. 18, 1935 until Jan. 11, 1939, during which period the proceedings in this instant case were pending before the Commission.

[3] Appendix B, p. 72.

"those persons who, in the absence of this provision, would be entitled to bring an original suit in a court of competent jurisdiction"?

To state the question is to answer it.

Petitioner regularly overlooks Sec. 402(d) of the Act which provides that "any interested person may intervene and participate in the proceedings had upon said appeal" and defines an interested person as

> "* * * Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the decision of the Commission complained of * * *."

This language is obviously not confined to applicants; otherwise, Congress would have enacted an appropriate definition for that purpose. It would be interesting to know how Petitioner applies its theory to this provision. We find it impossible.

(c) *Immediate Source of the Statutory Description—Sec. 5 of the Radio Act of 1927.*

Sec. 5 of the Radio Act of 1927[4] provided in part:

> "Any person, firm, company, or corporation, any State or political division thereof aggrieved or whose interests are adversely affected by any decision, determination, or regulation of the Secretary of Commerce may appeal therefrom to the Commission * * *."

The phraseology in the foregoing was the immediate source of the description used in the amended Sec. 16 enacted July 1, 1930, which, with unimportant modifications, became Sec. 402(b) to (f) of the Communications Act of 1934.

Under the Radio Act of 1927, as originally enacted, after the first year the Secretary of Commerce was to become the licensing authority and the commission a sort of ad-

[4] Appendix A, pp. 36-37.

ministrative court of appeals. For reasons explained elsewhere[4] this arrangement never went into effect. The full scope of the right of review conferred by Sec. 5 cannot be appreciated without reading it in full, but some indication of its breadth is given by the mandate to the Secretary of Commerce to refer to the Commission

> "* * * any application for a station license or for the renewal or modification of any existing station license as to the granting of which dispute, controversy, or conflict arises or against the granting of which protest is filed * * * by any party in interest. * * *"

Sec. 5 itself has an interesting legislative history.[5]

(d) *Legislative History of Sec. 402(b)(2).*

The legislative history of the Radio Act of 1927 reveals a growing momentum toward adequate appeal provisions for *all* interested parties, intensified by the complete lack of any such provisions in the Radio Act of 1912.[6] Notwithstanding efforts to accord the right to persons "interested in or aggrieved by any decision granting or refusing a license",[7] Sec. 16 of the Radio Act of 1927, as finally passed, gave the right only to rejected applicants.[8]

Its obvious defects became apparent as soon as appeals began to be taken from decisions of the Federal Radio Commission, particularly its failure to recognize the rights of persons adversely affected either by the Commission's granting of an application or as the result of the reviewing court's decision reversing the Commission. A number of clumsy and circuitous methods of getting before the court were resorted to, and the validity of Sec. 16 itself was un-

---

[4] Appendix A, pp. 8-10.
[5] Appendix A, pp. 5, 19-21.
[6] Appendix A, pp. 12-22.
[7] *Ibid.* pp. 18, 20.
[8] This section is set forth in full in Appendix A, p. 13.

der attack.[10] Consequently, both because of this defect and because the administrative status of the reviewing court did not permit review by the Supreme Court, Congress amended Sec. 16 by the Act of July 1, 1930 (46 Stat. 844). In the course of the debate preceding the enactment, Mr. Davis, who was one of the managers of the bill in the House and who had urged a more liberal appeal provision in 1926, after pointing out that certain other provisions "insured any interested party the right to be heard" said:

> "* * * The same is true with respect to the right of appeal to the courts. Any party aggrieved is given the right of appeal to the court."[11]

During the next four years two efforts were made to limit the persons having the right of appeal, both of which were rejected by Congress. In opposing one of them, Senator White stated:

> "* * * But whatever it means, it is a limitation upon the present right of appeal, for the present right of appeal is among others to any person adversely affected by a decision of the Federal Radio Commission. * * *"[12]

(c) *Effect of Re-enactment of the Amended Sec. 16.*

By the time Congress re-enacted (substantially) the amended Sec. 16 of the Radio Act of 1927, there had been a number of decisions giving scope to Sec. 402(b)(2).

In *Journal Company* v. *Commission*, 1931, 48 F. (2d) 461, the licensee of an existing station in Milwaukee appealed from a decision rendered by the Commission without hearing, according an increase in power to a station in Maine and a shift of stations in Florida on the same frequency, and thus causing interference to the Milwaukee station.

---

[10] Appendix A, pp. 22-25.

[11] Appendix A, p. 28.

[12] Appendix A, pp. 29-32, at p. 31.

The Journal Company took appeals both before and after enactment of the amendment. The court stated:

> "* * * Under the Act of 1927 no appeal was allowed in such circumstances. Recognizing this apparent defect in the statute, Congress in the Act of July 1, 1930 (46 Stat. 844 [47 USCA § 96], amending section 16 of the 1927 Act, provided for appeals by 'any other person, firm, or corporation aggrieved or whose interests are adversely affected by any decision of the commission granting or refusing any such application, or by any decision of the commission revoking, modifying, or suspending an existing station license.' * * * "

It reversed the Commission, holding the latter in error in its actions "without notice to appellant and an opportunity to be heard." (p. 464)

In several other cases during the period 1930-1934, appeals were taken from Commission decisions *granting* applications by parties adversely affected (a) by interference,[13] or (b) by economic injury.[14] No one questioned the rights of these appellants to avail themselves of the appeal provided by Sec. 402(b)(2). After 1934, there were further appeals of the same character.[15]

The re-enactment by Congress of the phraseology of Sec. 402(b)(2), after and in the light of decisions such as the *Journal Company* case (*supra*) and *Woodmen of the World* v. *Commission*, 65 F. (2d) 484, tends to show that Congress intended that "any person aggrieved or whose interests are affected" should include the licensees of existing stations affected by either interference or competitive economic injury. *Heald et al. v. District of Columbia*, 254 U. S. 20; *Latimer* v. *United States*, 223 U. S. 501.

---

[13] Unity School v. Commission, 1933, 64 F. (2d) 550; WREC, Inc. v. Commission, 1933, 67 F. (2d) 578 and Unity School v. Commission, Feb. 19, 1934, 69 F. (2d) 571.

[14] Woodmen of the World v. Commission, 1933, 65 F. (2d) 484; WGN, Inc. v. Commission, 1933, 68 F. (2d) 452.

[15] Head-of-the-Lakes Broadcasting Co. v. Commission, 1936, 84 F. (2d) 396; Eastland Co. v. Commission, 1937, 92 F. (2d) 467, and Pulitzer Publishing Co. v. Commission, 1937, 94 F. (2d) 249.

(f) *The Actual Nature and Extent of the Adverse Effect.*

What are the respects in which, as a matter of fact and not legal theory, the licensee of an existing broadcast station may be aggrieved or his interests adversely affected by the establishment of a new station? There are principally two, (1) interference, if the new station is assigned to the same or a closely adjacent frequency, and (2) economic, if the new station is established in the same community. To have any meaning at all with respect to licensees of existing stations, Sec. 402(b)(2) must include one or both of these types of injury.

The essence of the injury in both cases is *loss of listeners*. A broadcast station is licensed for "the dissemination of radio communications intended to be received by the public".[16] The Commission is given "authority to establish areas or zones to be served by any station".[17] When the station's public is decreased it is adversely affected. The decrease may come about through reducing its interference-free service area from a radius of 30 miles to a radius of 20 miles, in which event all persons within a 10-mile zone cease to be part of its potential audience. Or the decrease may come about through forcing existing stations to divide their potential audience with an additional station, whether it be the second station in a city having only one station or the sixth station in a city having five. In any event, the *actual* decrease in audience may be, and frequently is, far greater through the establishment of a new station in the same community than it is through additional interference. So far as *facts* count, the injury is at least just as great.

Talk of existing stations simply as advertising media is beside the point. The injury is *loss of listeners* and, in the case of commercial broadcast stations, this in turn means loss of favor with advertisers and reduced revenue.

[16] Sec. 3(o) of the Communications Act.

[17] Sec. 303(b) of the Communications Act.

Do persons other than the licensees of existing stations come within Sec. 402(b) (2)? The question is not before the Court. We suggest, however, that the clause extends at least to *other applicants*, including (1) those seeking to establish a station in the same community as that in which the new station is authorized, and (2) those whose applications cannot be granted due to considerations of interference arising from the Commission's grant or whose stations (if their applications are later granted) would suffer from increased interference. If the Commission makes up its mind to establish only one station in a community, competing applicants, even though applying for different frequencies, have very substantial interests in each other's application. This was the real situation in the *Heitmeyer* case, decided by this Court January 29, 1940.

There may be still other classes of persons within the description. For example, Sec. 5 of the Radio Act of 1927 provided for an appeal by "any State or political division thereof", presumably because of the mandate of fair and equitable distribution of broadcast facilities.

Any idea that to accord an appeal to a person in respondent's situation is to expand Sec. 402(b) (2) outside the limits of "case or controversy" would seem to be set at rest by *Federal Power Commission* v. *Pacific Power & Light Co.*, 307 U. S. 156, at p. 159.[18] See *Jones et al.* v. *Rhea*, 130 Va. 345, 107 S. E. 814.

---

[18] A search has been made of statutory provisions for appeal from other Federal administrative agencies without, however, producing anything which seems particularly relevant to the issues in this case. Instances of phraseology to describe persons eligible to appeal include the following:

Federal Power Commission: "Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing * * *." 16 U.S.C.A. 8251; 49 Stat. 860.)

Interstate Commerce Commission: " * * any party or parties in interest to the proceeding before the commission, in which

An underlying consideration of sound policy is present. Persons having so substantial an interest in the outcome of such proceedings are bound to give expression and effect to their opposition. Neither a statute nor a court decision can dissipate such an interest by saying that legally it is non-existent. It is far better that an outlet be furnished for open expression of such opposition at public hearing than that its strength be diverted into subterranean channels.

It seems hardly necessary to discuss seriously the disturbing prospect of multitudinous appellants, forecast by Petitioner in the event its view be not accepted. The statute has been in effect almost ten years, and the deluge has not materialized.

> " * * * It is always easy to conjure up extreme and even oppressive possibilities in the exertion of authority. But courts are not charged with general guardianship against all potential mischief in the complicated tasks of government. * * *"[19]

---

an order or requirement is made * * *: Provided further, That communities, associations, corporations, firms and individuals, who are interested in the controversy or question before the Interstate Commerce Commission * * * may intervene in said suit or proceedings at any time after the institution thereof; * *." (28 U.S.C.A. 45a; 38 Stat. 220.)

National Bituminous Coal Division: "Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review * * *." (15 U.S.C.A. 836(b); 50 Stat. 85.)

Securities and Exchange Commission: "(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Circuit Court of Appeals * *." (15 U.S.C.A. 77i; 48 Stat. 80.)

"(a) Any person aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person is a party may obtain a review * *." (15 U.S.C.A. 78y; 48 Stat. 926.)

United States Maritime Commission: " * * any party or parties in interest to the proceeding before the commission, in which an order or requirement is made * *." (28 U.S.C.A. 45a; 38 Stat. 220.)

[19] Federal Communications Commission v. Pottsville Broadcasting Co., decided Jan. 29, 1940.

III.

The Commission Was Required to Make Findings With Respect to Adequacy of Economic Support.

If our contentions under Point I are correct, the Commission's obligation to make findings on the economic issue seems axiomatic *unless* there is something peculiar about the Communications Act exempting it from well-settled maxims of statutory construction and elementary requirements of due process of law as applied to the administrative process. *Atchison etc. R. Co.* v. *United States*, 295 U. S. 193, 201; *United States* v. *B. & O. R. Co.*, 293 U. S. 454; *State of Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Chicago, etc. R. Co.*, 294 U. S. 499; *Beaumont etc. R. Co.* v. *United States*, 282 U. S. 74, 86; *Mahler* v. *Eby*, 264 U. S. 32, 44; *Wichita R. & Light Co.* v. *P. U. C.*, 260 U. S. 48, 58.

The principle has been applied by the United States Court of Appeals to decisions of the Commission from which appeals may be taken under Sec. 402(b). *Saginaw Broadcasting Co.* v. *Commission*, 96 F. (2d) 554; *Missouri Broadcasting Corp.* v. *Commission*, 94 F. (2d) 623, cert. denied, 303 U. S. 655; *Tri-State Broadcasting Co., Inc.* v. *Commission*, 96 F. (2d) 564; *Heitmeyer* v. *Commission*, 95 F. (2d) 91.

The position of the court below on this question was summarized in an opinion by Mr. Justice Stephens, *Saginaw Broadcasting Co.* v. *F. C. C.*, *supra*:

> "The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of the court or commission, so that the parties and the reviewing tri-

bunal may determine whether the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extralegal considerations. When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts.

* * * * *

"We ruled in Missouri Broadcasting Corporation v. Federal Communications Commission, 68 App. D. C. 154, 94 F. 2d 623, 1937, and again in Heitmeyer v. Federal Communications Commission, 68 App. D. C. 180, 95 F. 2d 91, 1937, that findings of fact in the broad terms of public convenience, interest, or necessity, the criterion set up by Section 319(a) of the Act, were not sufficient to support an order of the Commission. We now rule that findings of fact, to be sufficient to support an order, must include what have been above described as the basic facts, from which the ultimate facts in the terms of the statutory criterion are inferred.

* * * * *

"These decisions show that a reviewing court cannot properly exercise its function upon findings of ultimate fact alone, but must require also findings of the basic facts which represent the determination of the administrative body as to the meaning of the evidence, and from which the ultimate facts flow. Such findings are, we think, just as necessary in cases involving the application of the statutory criterion of public convenience, interest, or necessity set up by the Communications Act, as in those cases which under the Interstate Commerce Act require the application of the standard of unjust discrimination, or in those cases

which under state public utility statutes require the application of the criterion of public convenience and necessity."

Petitioner rests its claim to dispensation on a literal rendition of the language of Sec. 309(a),[1] plus an inarticulate premise that the Commission, in the granting or refusal of radio applications, is purely an executive agency and is accordingly exempt from the requirements of due process. The resulting syllogism runs as follows:

a) The Commission has unlimited discretion to grant any of the four kinds of applications without hearing and, conversely, it need not hold any hearing on any such application except as a condition precedent to denial thereof.

b) *Ergo*, it need not make or publish any findings (other than mechanically to repeat the formula "public interest, convenience or necessity") where it *grants* an application, even though the application has been subjected to hearing in which adverse parties have participated.

c) *Ergo*, even where the Commission denies an application, its obligation to make or publish any findings (always excepting the stark formula) is doubtful,—at least for a period of 60 days after an appeal is taken and the appellant has been required to file his "statement of reasons" for complaining about findings not yet made (Sec. 402). Parties must look to original suits in court (but not on appeal) for due process (Petitioner's Brief, pp. 52-3).

The foregoing, we submit, is casuistry.

[1] Petitioner apparently concedes, as logic requires it should, that the procedural requirements of Sec. 309(a) are to be read into Sec. 319(a).

(a) *The Commission's Own Interpretation of Sec. 309(a).*

We may properly begin with the Commission's own pronouncements interpreting and applying Sec. 309(a). Its most recent description of the practical application of Sec. 309(a) is found in its report submitted to Congress November 15, 1939:

> "Where the Commission, upon the examination of a particular application, is unable to reach the requisite statutory determination that a grant thereof would serve public interest, convenience, and necessity, it is designated for formal hearing upon specific issues, and all persons having an interest in the matter are given an opportunity to become parties and to participate in the hearing. * * * Under the new procedure, after a hearing has been held the parties thereto are permitted 20 days from the date that the transcript of record is filed within which to file proposed findings of fact and conclusions. The Commission then issues its proposed findings of fact and conclusions and the parties are allowed 20 days thereafter within which to file exceptions thereto and to request oral argument thereon before a final decision is rendered. In the event no exceptions or requests for oral argument are filed, the Commission issues an order adopting and giving final effect to its proposed decision. Under the new procedure, the Commission is able, where a proceeding proves to be noncontroversial, to decide docket cases by issuing its final order in lieu of a proposed decision. This practice is followed whenever it is practicable to do so."[2]

---

[2] Fifth Annual Report of Federal Communications Commission, Nov. 15, 1939, at pp. 42-3. See, however, the somewhat contradictory excerpt quoted in Appendix B, p. 77. The report goes on to state:

> "Formal hearings were held on 140 applications involving requests for new stations and for changes in broadcast station facilities, 46 of which were decided and 94 were still pending at the close of the year. Hearings were held on 25 applications involving assignment of licenses and transfer of control of licensee corporations, 14 of which were decided and the remainder were still pending at the close of the year. The majority of such applications were acted upon without the neces-

As early as May 26, 1927, the Federal Radio Commission issued regulations governing hearings on applications providing that "all persons interested in the granting or refusal of the application * * * may appear and will be heard." Beginning with the formal code of regulations adopted by the Commission June 25, 1930, and continuing through the regime of the present Commission until August 1, 1939, the regulations have regularly provided, in substance, that the Commission would not grant an application without hearing unless it first found

> a) that the granting would serve public interest, convenience, or necessity, *and*
>
> b) that the granting of such application would not aggrieve or adversely affect the interests of any licensee, or any person having a pending application.

Otherwise it would designate the application for hearing and interested persons were permitted to participate, by being made parties either directly by the Commission's notice or on petition to intervene. In cases where applications were granted without hearing, provision was made that during a specified period

> "* * * any person aggrieved or whose interests may be adversely affected may obtain a hearing by filing a protest. * * *"[1]

In February, 1931, the Commission instituted the practice, which it adhered to consistently until recently (and to which it still adheres to a large extent), *i. e.*,

> "* * * to issue a decision or a statement in writing of the facts and the grounds for its decision in all cases

---

sity of formal hearings. Hearings were also held on 18 renewal of license applications, 5 of which were decided. During the year the Commission heard oral argument in more than 100 broadcast cases, and it adopted formal decisions in more than 200 cases."

[1] Appendix B, p. 59.

[2] Appendix B, p. 73.

> where the decision is adverse to a party of record in the case, or in all cases which may be appealed under the provisions of section 16 of the act. * * *"[5]

The only question raised in the intervening period appears in the following excerpt from the Commission's report submitted to Congress December 14, 1938:

> "A recent decision of the court held that in cases arising under title III of the Communications Act the statement of facts and grounds for its decision should be made by the Commission at the time it enters its order in the premises. Prior to this ruling it had been the practice of the Commission in some cases to enter its final order and at a subsequent date to publish its statement of facts and grounds for decision. The Commission now publishes its findings of facts, grounds for decision, and order at the same time."[6]

On July 12, 1939, effective August 1, 1939, the Commission radically revised its procedural rules so as to call for designating applications for hearing only when

> "* * * the Commission is unable to determine * * * that the granting of such application * * * would serve public interest, convenience, or necessity * * *".

and limited intervention to cases where "intervention will be in the public interest." It thus excluded any consideration of whether any person (licensee, applicant or other) would be adversely affected, both as a factor bearing on

---

[5] Fifth Annual Report of the Federal Radio Commission, 1931, pp. 9-10, Appendix B, p. 66. The Federal Radio Commission's decisions were never published as reports and are not available except in mimeographed form. The five volumes of printed reports of the present Commission, covering the period to June 30, 1938, are sufficient evidence of the actual practice of both Commissions. These effectively dispose of the assertion in Petitioner's Brief (p. 50) that neither Commission "has ever assumed * * * that any detailed findings of fact were required".

[6] Fourth Annual Report of the Federal Communications Commission, p. 5. The decision referred to Missouri Broadcasting Co. v. Commission, 94 F. (2d) 623.

whether the application should be set for hearing and as a factor giving a right to participate in a hearing.

It is this revolutionary change in the Commission's application of Sec. 309(a), occurring some 18 months after respondent took its appeal and over six months after the lower court's decision, that is now being urged upon the Court by Petitioner as the *only* correct interpretation of the statute.

(b) *Considerations Supporting the Commission's (until recent) Interpretation.*

As guides to the construction to be given Sec. 309(a) we propose the following, drawn from opinions of the Court:

> "* * * The 'hearing' that such commissions are to give must be adapted to the consequences that are to follow, to the attack and the review to which their orders will be subject. Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 93; United States ex rel. St. Louis S. W. R. Co. v. Interstate Commerce Commission, 264 U. S. 64; Atchison, T. & S. F. R. Co. v. United States, 284 U. S. 248. The Commerce Act, as it stands today, and kindred statutes in the states, are instinct with the recognition of a duty to give a hearing of such a kind that the courts will understand why a Commission has acted as it has if their supervisory powers are afterwards invoked for enforcement or revision. * * *"[1]
>
> "* * * In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution. An act of Congress must be taken to be constitutional unless the contrary plainly and palpably appears. The words here used do not require an interpretation that would invest executive or administrative officers with the absolute, arbitrary power implied in the contention of the appellant. * * *"[2]

[1] Norwegian Nitrogen Products Co. v. United States, 288 U. S. 294, at p. 319.

[2] Yamataya v. Fisher, 189 U. S. 86, at p. 101.

"* * * And the act, construed as we construe it, will take no power from the commission necessary to the performance of its duties, and will leave no power with it that it can exercise to the detriment of any right assured to an applicant for a license by the Constitution of the United States."[9]

Sec. 309(a) is easily susceptible of a reading requiring the Commission to afford opportunity for hearing where there is danger of aggrieving or adversely affecting the interests of others.

By the original issuance of a license and successive renewals thereof, the Commission has repeatedly determined that public interest, convenience or necessity is served by the full-time operation of WKBB at Dubuque on 1500 kc. with power of 100 watts, thus automatically authorizing it to give broadcast service over an area having a certain size and a given population. To authorize a new station to operate on the same frequency at an insufficient distance from Dubuque, with resultant interference, means an overlapping of two determinations, both purporting to be pursuant to the standard. It takes away from one broadcaster and one portion of the public in order to give to another broadcaster and another portion of the public. The doubt necessarily raised calls for a hearing to resolve the conflict.

An analogous conflict of determinations under the standard is presented when a second station is proposed for Dubuque itself, the standard having previously been applied so as to permit only one station, with the added circumstance that, with two stations, neither may be able to render good service, and some other area and the population dwelling therein may be deprived of its due under Sec. 307(b).

The words "determine" and "finding" in the first sentence of Sec. 309(a) may in themselves be considered to import notice and hearing where necessary, but it is not necessary to go that far. Sec. 309(a) does not confine par-

[9] Bratton v. Chandler, 260 U. S. 110, at p. 115.

ticipation in the hearing it prescribes to applicants, or exclude persons adversely affected from opportunity to be heard. The Commission is given broad authority to prescribe rules and regulations to govern the hearing.

Sec. 402(b) to (f) cannot be given an intelligible interpretation unless Sec. 309(a) be construed to require opportunity for hearing for persons aggrieved or whose interests are adversely affected. This is shown by the following:

(a) Sec. 402(b)(2), describing the persons other than rejected applicants who may appeal from decisions of the Commission.

(b) Sec. 402(c), requiring the Commission to mail or otherwise deliver a copy of each notice of appeal to *each person shown by its records to be interested in the appeal and to have a right to intervene therein;* to file certain documents, including *evidence*, and "a full statement in writing of the facts and grounds for its decision as found and given by it", and *a list of all interested persons* to whom it has mailed or otherwise delivered the copy of appeal notice.

(c) Sec. 402(d) providing for intervention.

(d) The references in Sec. 402(e) to "findings" and "substantial evidence".

Sec. 405, governing petitions for rehearing is likewise not intelligible unless Sec. 309(a) be construed as we contend it should be. Other provisions confirming this construction are:

(a) Sec. 4(j) which reads in part

"The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. * * * *Any party* may appear before the Commission and be heard in person or by attorney. Every vote and

official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of *any party interested.* * * *" (Italics supplied)

(b) Sec. 5(e) which, while authorizing the Commission to delegate certain functions, stipulates that

" * * * this authority shall not extend * * * to contested proceedings involving the taking of testimony at public hearings, * * * ."

and giving the right of rehearing to

" * * * Any party affected by any order, decision, or report of any such individual commissioner or board * * * ."

(c) Sec. 409(a) which provides in part that

" * * * In all cases heard by an examiner the Commission shall hear oral arguments on request of either party."

(d) The provisions in Sec. 409(c) to (e) having to do with depositions.

It must be conceded that Sec. 309(a) is inartistically phrased. Its origin (as Sec. 11 of the Radio Act of 1927) it was a makeshift, hurriedly drafted by the Conference Committee to bridge the gap between the House and Senate bills. That it is not evidence of any intention on the part of Congress to foreclose or limit opportunity for hearing for all interested parties is clearly demonstrated by its history and the context into which it was inserted.[10]

Petitioner's suggestion that due process is not the Commission's responsibility but falls on the courts and that

"any aggrieved person * * * may institute an original suit in a court of competent jurisdiction." (Brief, pp. 52-53)

[10] Appendix A, pp. 33-38.

comes as a surprise to those who have observed how vigorously (and successfully) Petitioner has resisted any attempt in this direction, always with the claim that the remedy by appeal under Sec. 402(b) is exclusive.[11]

Paramount as is the public interest in radio communication, it must not be forgotten that regulation of the use of radio transmitters, whether through the license system or other governmental machinery, is nevertheless regulation of the use of property, and of liberty to engage in certain callings. Because of the paramount public interest, this regulatory power extends far, even to the point of forbidding most persons to use this property or to engage in such callings, and severely to limit the rights of others within narrow bounds. But the exercise of this regulatory power, great as it is, must at all times be consonant with the essentials of due process.

---

[11] McNinch v. Heitmeyer, 105 F. (2d) 41; Black River Valley Broadcasts, Inc. v. McNinch, 101 F. (2d) 235; Monocacy Broadcasting Co. v. Prall, 90 F. (2d) 421; Sykes v. Jenny Wren Co., 78 F. (2d) 729. Petitioner's brief in Sunshine Broadcasting Co. v. Fly et al., Civil Action No. 4638, now pending in the District Court of the United States for the District of Columbia, is more than illuminating. This case is an attempt by the licensee of one of five existing stations in San Antonio, Texas, apprehending economic injury from the possible granting of a pending application for improved facilities for one of the stations, to take the legal remedy now prescribed by Petitioner. Petitioner, however, by motion filed in that court on January 2, 1940, moved to dismiss the complaint. Its brief in support of the motion, tells the District Court, among other things (at p. 12):

> "Such rights as plaintiff may have which could possibly be invalid by any action of the Commission on the KMAC application can be completely vindicated in an appeal under Section 402(b) of the Communications Act of 1934, as amended. * * * Assuming the Commission acted unlawfully in denying plaintiff's petition to intervene and to enlarge issues, if the Commission ultimately grants the KMAC application and thereby invades any right of plaintiff, the remedy by appeal under Section 402(b) will afford plaintiff an adequate method of testing the validity of the Commission's decision."

IV.

Consideration of Confidential Papers by the Commission Deprived Respondent of a Fair Hearing.

The essential facts are set forth above, page 4. See also respondent's notice of demand (R. 418-20); and petition for rehearing (R. 421-22). A motion suggesting diminution of the record was filed in the court below. The question was considered in its opinion (R. 475-6).

Existence of the confidential papers described in respondent's notice and motion is not denied. The confidential papers are not in the record. Their contents are not known to respondent. It believes that their production and certification to the court below is required expressly by Section 402(c) of the Act, which in part provides:

> "* * * Within thirty days after the filing of said appeal the Commission shall file with the court the originals or certified copies of *all papers and evidence presented to it upon the application* involved, * * *" (Italics supplied)

Respondent earnestly urges that it was deprived of a full and fair hearing by the Commission's consideration of confidential papers extraneous to the record, and by failure of the Commission to provide respondent any opportunity to be confronted with, or to refute such statements of fact, opinion, or argument as may be contained in the confidential memoranda. *Interstate Commerce Commission* v. *Louisville and Nashville R. Co.*, 227 U. S. 88, 93; *The Chicago Junction Case*, 264 U. S. 258, 265; *United States* v. *Abilene & Southern R. Co.*, 265 U. S. 274; *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 75; *Morgan* v. *United States*, 298 U. S. 468, 480; *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U. S. 292; *Morgan* v. *United States*, 304 U. S. 1, 22.

In the *Louisville and Nashville Case*, *supra*, this court said:

"* * * manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. * * * All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. * * *" (p. 93)

The consideration of confidential memoranda which was wholly inaccessible, is even more objectionable than the use of material drawn from published annual reports, which was condemned by this court in the *Abilene Case, supra:*

"* * * Nothing can be treated as evidence which is not introduced as such. * * *

"* * * The requirement that, in an adversary proceeding, specific reference be made, is essential to the preservation of the substantial rights of the parties." (pp. 288, 289)

The rule above stated also embraces the right to be confronted with and the opportunity to refute whatever contentions, argument, or opinion statement there may be in the confidential memoranda. In the first *Morgan Case, supra*, this court said:

"A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding. * * * The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The 'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the

order has not considered evidence or argument, it is manifest that the hearing has not been given." (pp. 480, 481)

The rule was restated in the second Morgan Case, *supra*, thus:

> " * * * Again, the evidence being in, the Secretary might receive the proposed findings of both parties, each being notified of the proposals of the other, hear argument thereon and make his own findings. But what would not be essential to the adequacy of the hearing if the Secretary himself makes the findings is not a criterion for a case in which the Secretary accepts and makes as his own the findings which have been prepared by the active prosecutors for the Government, after an *ex parte* discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented and to contest them. That is more than an irregularity in practice; it is a vital defect." (p. 22)

By express provision of statute, a hearing before this Commission (under circumstances of this case) includes right of oral argument by "either party" Sec. 409(a). See also Sec. 4(j) providing that the Commission's "proceedings shall be public upon the request of any party interested."

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed, modified, however, to include instructions to the Commission appropriate in the light of our contentions in Point IV.

LOUIS G. CALDWELL,
REED T. ROLLO,
DONALD C. BEELAR,
PERCY H. RUSSELL, JR.,
Attorneys for Respondent.

February 7, 1940.

FILE COPY

No. 439

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

APPENDICES TO BRIEF FOR RESPONDENT.

LOUIS G. CALDWELL,
REED T. ROLLO,
DONALD C. BEELAR,
PERCY H. RUSSELL, JR.,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS.

	Page
Appendix A, Legislative History of Pertinent Provisions of Communications Act of 1934	1
I. General	1
II. The Provision Governing Appeals	12
(a) Section 16 of the Radio Act of 1927 in its Original Form	13
(b) Defects in the Operation of Sec. 16	22
(c) Legislative History of Act of July 1, 1930, Amending Sec. 16 of the Radio Act of 1927	26
(d) Further Efforts to Amend Sec. 16 of the Radio Act of 1927	29
III. The Provision Governing Hearings Before the Commission on Applications	33
(a) Sec. 11 of the Radio Act of 1927	33
(b) Sec. 319 of the Communications Act of 1934	38
IV. The Standard "Public Interest, Convenience or Necessity"	40
1. Origin of the Standard as Used in the Radio Act of 1927	42
2. Debates and Committee Reports	48
(a) Extract from Remarks of Mr. White, Jan. 31, 1923	48
(b) Extracts from Remarks of Mr. White, Mar. 12, 1926	49
(c) Extracts from Remarks of Mr. Dill, June 30, 1926	51
(d) Extracts from Remarks of Mr. White, Jan. 29, 1927	54
(e) Extracts from Remarks of Mr. Dill, Feb. 3, 1927	54
3. Limitations Imposed by Section 326	55
Appendix B, The Commission's Administrative Construction of the Pertinent Provisions of the Communications Act of 1934	59
I. The Commission's Construction of Secs. 309(a) and 319 to Require Opportunity for Hearing for Persons Adversely Affected	59
II. The Commission's Construction of "Persons Adversely Affected" to Include Licensees and Other Applicants Who will Suffer Economic Injury	78
III. The Commission's Construction of the Standard of "Public Interest, Convenience or Necessity" to Authorize or Require it to take Nature and Extent of Economic Injury into Account	79
1. Actions on Applications under Secs. 307(a), 309(a) and 319	79
2. Actions on Transfers of License or Control under Sec. 310(b)	92
3. Actions on Permits to Export Radio Programs under Sec. 325	95
IV. Exercise of Regulation Making Powers under Sec. 303	97
V. Exercise of Inquisitorial Functions	107

Page

Appendix C, Miscellaneous Documents 110

Petitioner's Motion to Dismiss in the United States Court of Appeals for the District of Columbia (filed Jan. 24, 1938) 110

Excerpts from Commission's Petition for Rehearing 111

Appendix D, Additional Relevant Provisions of the Communications Act of 1934 116

CITATIONS.

Cases:

Agricultural Broadcasting Co. v. *Commission*, 1929, 37 F. (2d) 993 24
Carmichael v. *Anderson*, 14 F. (2d) 166 ..... 2, 15
Chicago Federation of Labor v. *Commission*, 1930, 41 F. (2d) 422 24
Durham Life Insurance Co. v. *Federal Radio Commission*, 55 F. (2d) 537 ..... 12, 39
Federal Radio Commission v. *General Electric Co.*, 281 U. S. 464 22
General Electric Co. v. *Federal Radio Commission*, 1929, 58 App. D. C. 386, 31 F. (2d) 839 ..... 4, 24
Great Lakes Broadcasting Co. v. *Commission*, 1929, 37 F. (2d) 993 24
Hoover v. *Intervity Radio Co.*, 52 App. D. C. 339, 286 F. 1003 ..... 2, 15, 52
Jenny Wren Co. v. *Sykes*, et al., 78 F. (2d) 729 90
Journal Co. v. *Commission* (four appeals), 1931, 48 F. (2d) 461 ..... 24, 25
Monocacy Broadcasting Co. v. *Prall, et al.*, 90 F. (2d) 421 90
Pacific Development Radio Co. v. *Federal Radio Commission*, 55 F. (2d) 540 ..... 12, 39
Richmond Development Corp. v. *Federal Radio Commission*, 35 F. (2d) 883 ..... 4, 79
Short-Wave Appeals (four cases), 1931, 46 F. (2d) 602 24
Tribune v. *Oak Leaves Broadcasting Station*, Cir. Ct. Cook County, Ill., Nov. 17, 1926, 68 Cong. Rec. 266 ..... 3, 8, 15
United States v. *American Bond & Mortgage Co.*, N. D., Ill. E. D. 1929, 31 F. (2d) 448 4
United States v. *Zenith Radio Corp.*, 12 F. (2d) 614 ..... 2, 3, 15, 52
Woodmen of the World Life Insurance Assoc. v. *Federal Radio Commission*, 57 F. (2d) 420 80

Federal Radio Commission Decisions:

In re Red Oak Radio Corp., Dkt. 1678 80
In re Richmond Development Corp., Dkt. 246 79
In re Stromberg-Carlson Telephone Mfg. Co., et al; Dkt. 870, et seq. 97

Federal Communications Commission Decisions:

In re City of Atlantic City, Dkts. 5350 and 5351 95
In re Fall River Herald News Publishing Co., 5 F. C. C. 377 85
In re Genesee Radio Corp., 5 F. C. C. 183 89
In re, Hazeltwood, Inc., Dkt. 5698 ..... 77, 92
In re Frank P. Jackson, Dkt. 2207 94
In re Kentucky Broadcasting Corp., Order to Show Cause, Nov. 20, 1939 109
In re Nellie H. and W. C. Morris, d/b Hotel Eagle, 2 F. C. C. 269 95
In re Mutual Broadcasting System, Inc., Dkt. 5219 95
In re F. J. Reynolds, Dkt. 2180 94
In re WABI, Dkt. 5677 92

Page

In re WHB Broadcasting Co., Inc., Dkt. 2423 90
In re T. Yount, d/b Universal Advertising Agency, 2 F. C. C. 200 96

Statutes:

Act of Aug. 13, 1912, c. 287, 37 Stat. 302 ..... 2, 3, 4, 6, 14, 44, 48, 49
Sec. 4 44
Sec. 4(15) 44

Radio Act of 1927, Act of Feb. 23, 1927, c. 169, 44 Stat. 1162 .... 2, 3, 4, 6, 7, 8, 9, 10, 11, 58

Sec. 4 ..... 40, 42, 43, 46
Sec. 4(f) 41
Sec. 5 ..... 14, 36, 39
Sec. 9 ..... 34, 35, 40, 42, 43, 46, 79
Sec. 10 35
Sec. 11 ..... 33, 34, 35, 36, 38, 39, 40, 42, 59, 60, 79
Sec. 12 41
Sec. 16 ..... 12, 13, 14, 17, 22, 23, 24, 25
Sec. 21 ..... 38, 39, 40, 42, 43, 46, 59, 79
Sec. 29 55

As Amended by Act of Mar. 28, 1928, c. 263, 45 Stat. 373 10
As Amended by Act of Mar. 4, 1929, c. 701, 45 Stat. 1559 10
As Amended by Act of Dec. 18, 1929, c. 7, 46 Stat. 50 10
As Amended by Act of July 1, 1930, c. 788, 46 Stat. 844 .... 10, 12, 26, 27, 32
As Amended by Act of June 30, 1932, Sec. 511, c. 314, 47 Stat. 417 ... 10, 38

Communications Act of 1934, Act of June 19, 1934, c. 652, 48 Stat. 1064 ..... 1, 7, 31, 72

Sec. 3 116
Sec. 3(h) 55
Sec. 4(j) 116
Sec. 4(l) 116
Sec. 303 ..... 40, 97, 117
Sec. 303(a) 117
Sec. 303(b) 117
Sec. 303( ) 117
Sec. 303(e) 117
Sec. 303(f) 33, 40
Sec. 303(g) 117
Sec. 303(h) 117
Sec. 303(i) 6, 117
Sec. 303(j) 117
Sec. 303(k) 117
Sec. 307(a) 34, 40, 79
Sec. 308(b) 118
Sec. 309(a) 33, 38, 40, 55, 59, 78, 79
Sec. 310(a) 118
Sec. 310(b) 33, 41, 42
Sec. 311 ..... 6, 55
Sec. 312(a) 33
Sec. 312(b) 33, 79
Sec. 313 6
Sec. 314 6
Sec. 319(a) 33, 38, 40, 59, 78, 79
Sec. 319(b) 33, 38, 40, 59, 78, 79, 119

Page

Sec. 325 . . . . . 95, 96
Sec. 325(b) 96, 120
Sec. 325(c) 41, 42, 120
Sec. 326 . . . . . 55, 120
Sec. 402(b) 12, 32
Sec. 402(c) 12, 32
Sec. 402(d) 12, 32
Sec. 402(e) 12, 32
Sec. 402(f) 12, 32
Sec. 404 124
Sec. 405 33
Sec. 604(a) 72

As Amended by Act of June 5, 1936, c. 511, 49 Stat. 1475 . . . . . 1, 55
As Amended by Act of May 20, 1937, c. 229, 50 Stat. 189 1

Congressional Bills:

60th Congress

S. 5949, introduced Mar. 6, 1908 . . . . . 14, 43

61st Congress

H. R. 19560, introduced Jan. 27, 1910 43
H. R. 22538, introduced Mar. 8, 1910 43
H. J. Res. 95, introduced Dec. 17, 1909 43
H. J. Res. 182, introduced Mar. 29, 1910 43
S. 7061, introduced Mar. 10, 1910 . . . . . 14, 43

62nd Congress

S. 6412 14

66th Congress

S. 4038, introduced Mar. 8, 1920 . . . . . 15, 38, 44

67th Congress

H. R. 4132, introduced Apr. 18, 1921 . . . . . 5, 45
H. R. 5889, introduced May 6, 1921 . . . . . 5, 45
H. R. 11964, introduced June 9, 1922 46
H. R. 13773, introduced Jan. 11, 1923 . . . . . 5, 16, 42, 48
H. Res. 548 6
S. 31, introduced Apr. 12, 1921 . . . . . 16, 44
S. 1627, introduced May 6, 1921 46
S. 3694, introduced June 8, 1922 46

68th Congress

H. R. 7357, introduced Feb. 28, 1924 17
S. 2796, introduced Mar. 10, 1924 46
S. 2930, introduced Mar. 24, 1924 . . . . . 6, 16, 17, 43, 46

69th Congress

H. R. 5589, introduced Dec. 15, 1925 . . . . . 7, 18, 36, 42
H. R. 9108, introduced Feb. 9, 1926 . . . . . 7, 18, 28, 36, 42
H. R. 9971, introduced Mar. 3, 1926 . . . . . 7, 18, 35, 36, 42, 49, 51, 54, 57
S. 1, introduced Dec. 8, 1925 7
S. 1754, introduced Dec. 16, 1925 . . . . . 7, 18, 36, 42, 57
S. 3968, introduced Apr. 13, 1926 . . . . . 7, 34

Page

S. 4057 introduced Apr. 22, 1926 ..... 7, 18, 42, 57
S. 4156, introduced May 3, 1926 ..... 7, 18
S. J. Res. 125 8

71st Congress

H. R. 10473, introduced Mar. 4, 1930 ..... 26, 27
H. R. 11635, introduced Apr. 14, 1930 ..... 26, 27, 29
H. R. 12599, introduced May 24, 1930 27
S. 6 23
S. J. Res. 176 26

72nd Congress

H. R. 7716 ..... 29, 31

73rd Congress

H. R. 8301 32
S. 2910 32
S. 3285 32

Congressional Reports and Hearings

62nd Congress

S. Rep. 698 2

66th Congress

Sen. Doc. 248 15

68th Congress

H. Rep. 719 ..... 17, 47

69th Congress

H. Rep. 404 ..... 18, 19, 20, 28
H. Rep. 464 7
H. Rep. 1886 ..... 8, 9, 10, 42
S. Rep. 772 ..... 7, 57
Sen. Doc. 206 ..... 8, 42

71st Congress

H. Rep. 1179 26
H. Rep. 1633 26
H. Rep. 1665 27
S. Rep. 694 26
Hearings on S. 6 before the Senate Committee on Interstate Commerce 23, 27, 60

72nd Congress

H. Rep. 221 30
Hearings on H. R. 7716 before Senate Committee on Interstate Commerce 31
S. Rep. 564 30

73rd Congress

Hearings on H. R. 8301 before House Committee on Interstate and Foreign Commerce 32
S. Rep. 781 32

Page

Hearings on S. 2910 before Senate Committee on Interstate Commerce 32
Conference Rep. 1918 32

Congressional Debates:

67th Congress

64 Cong. Rec. 5, 16, 48

68th Congress

65 Cong. Rec. 6
66 Cong. Rec. 6

69th Congress

67 Cong. Rec. 3, 6, 7, 8, 20, 21, 22, 47, 49, 51, 52, 53, 54, 56, 57, 58
68 Cong. Rec. 4, 6, 8, 22, 54, 55, 58

71st Congress

72 Cong. Rec. 26, 27, 28, 29
74 Cong. Rec. 4

72nd Congress

75 Cong. Rec. 4, 30
76 Cong. Rec. 30, 31

Publications of the Commission:

Annual Reports

First Annual Report of Federal Radio Commission, 1927 59
Third Annual Report of Federal Radio Commission, 1929 60
Fourth Annual Report of Federal Radio Commission, 1930 . . . . . 63, 66
Fifth Annual Report of Federal Radio Commission, 1931 66
Sixth Annual Report of Federal Radio Commission, 1932 . . . . . 68, 71
First Annual Report of Federal Communications Commission, 1935 . . 108
Fifth Annual Report of Federal Communications Commission, 1939 . . 77, 103

Rules and Regulations

General Order No. 12, Federal Radio Commission, May 26, 1937 . . 59
General Order No. 93, Federal Radio Commission, Rules Governing Practice and Procedure, effective Sept. 1, 1930:

Subtitle B—Sec. 5 63
Subtitle B—Sec. 7 63
Subtitle D—Sec. 1 64
Subtitle D—Sec. 3 64

Rules and Regulations, Federal Radio Commission, effective Feb. 1, 1932:

Rule 44 . . . . . 68, 70, 72, 89
Rule 45 . . . . . 68, 70, 72
Rule 48 . . . . . 69, 72
Rule 57 . . . . . 69, 72
Rule 59 . . . . . 70, 72

Page

Federal Communications Commission, Practice and Procedure, Revision of Dec. 18, 1935:

Rule 102.6 73
Rule 102.7(c) 73
Rule 102.8(b) 74
Rule 104.4 73
Rule 104.6 . . . . . 72, 89
Rule 105.29 74
Rule 105.21(b) 73

Federal Communications Commission, Practice and Procedure, Revision effective Jan. 1, 1939:

Sec. 3.08(h) 74
Sec. 6.92 74
Sec. 14.01 74
Sec. 15.11 107
Sec. 15.31 75

Federal Communications Commission, Rules Relating to International Broadcast Stations, suspended July 14, 1939:

Sec. 4.43 . . . . . 104, 105

Federal Communications Commission, Practice and Procedure, Revision effective Aug. 1, 1939:

Par. 1.54 75
Par. 1.58 75
Par. 1.102 75
Par. 1.271 76
Par. 1.361 107
Par. 1.382 76

Federal Communications Commission, Proposed Television Rules, Mimeograph Release No. 38225:

Sec. 4.73(a) 106
Sec. 4.73(b) 106
Sec. 4.73(c) 106
Sec. 4.73(d) 106

Notices of Hearing, Reports, and Miscellaneous Publications

Notice of Hearing on Proposed Rules Governing Standard Broadcast Stations and Standards of Good Engineering Practice, Dkt. 5072-A . . 101
Notice of Informal Hearing Before Broadcast Division, Dkt. 4063 . . 98
Part I of Committee Report, Dkt. 5072-A, Mimeograph Release No. 31703 101
Part II of Committee Report, Dkt. 5072-A, Mimeograph Release Nos. 32825 and 32825-A 102, 103
Preliminary Engineering Report Pursuant to Oct. 5, 1936 Hearing, Dkt. 4063, Mimeograph Release No. 19557 98
Report on Social and Economic Data Pursuant to Oct. 5, 1936 Hearing, Dkt. 4063, Mimeograph Release No. 23454 . . . . . 99, 100, 101
In re Investigation of Chain or Network Broadcasting, Dkt. 5060 . . 103, 104
F. C. C. Order No. 37 104
F. C. C. Application Form No. 303—Renewal 108
F. C. C. Financial Report Form, Mimeograph Release No. 38522 108

Page

Proceedings of National Radio Conferences:

First National Radio Conference, Department of Commerce Radio Service Bulletin No. 61, May 1, 1922 ..... 3, 44, 45, 51
Second National Radio Conference, Department of Commerce Radio Service Bulletin No. 72, Apr. 2, 1923 3
Third National Radio Conference, Recommendations Adopted by the Third National Radio Conference, 1934, Gov. Pr. Off. 3, 56
Fourth National Radio Conference, Proceedings of the Fourth National Radio Conference, 1925, Gov. Pr. Off. 3, 17, 47, 56

Law Review Articles:

1 Jour. Radio Law 102 22
1 Jour. Radio Law 381 12
Caldwell, New Rules and Regulations of the Federal Radio Commission, 2 Jour. Radio Law 66 68
2 Jour. Radio Law 752 10
Caldwell, Practice and Procedure Before the Federal Radio Commission, 1 Jour. Air Law 169 61
Appeals from Decisions of the Federal Radio Commission, 1 Jour. Air Law 274 .....24, 25
Federal Communications Bar Journal, Nov. 1938 95

American Bar Association Reports:

Report of Standing Committe on Radio Law, A. B. A., 1929, 54 A. B. A. Rep. 439 .....4, 22, 23, 24, 60
Report of Standing Committee on Communications, A. B. A., 1930, 55 A. B. A. Rep. 393 24
Report of Standing Committee on Communications, A. B. A., 1931, 56 A. B. A. Rep. 369 67
Report of Standing Committee on Communications, A. B. A., 1932, 57 A. B. A. Rep. 448 71

Opinions of Attorneys-General:

Opinion of Attorney General Wickersham, Nov. 12, 1912, 29 Opp. Attys. Gen. 579 2
35 Opp. Attys. Gen. 126 2
Opinion of Acting Attorney General Donovan, July 8, 1926, 35 Opp. Attys. Gen. 292 2

Other Authorities:

Davis, Stephen, Law of Radio Communication, 1927 ..... 2, 4
Zollman, Cases on Air Law, 1st ed., 1930 3

Miscellaneous:

F. C. C. Minute No. 235 90
Federal Trade Commission, Report on the Radio Industry, Dec. 1, 1923, in response to H. Res. 548, 67th Cong. 6
Nicholson, John, Radio Bills and Resolutions, 74 Cong. Rec. 7055; revised 75 Cong. Rec. 15 16 4
United States Daily, Jan. 18, 1929 .....23, 60

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 499

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner,*

v.

SANDERS BROTHERS RADIO STATION

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

APPENDICES TO BRIEF FOR RESPONDENT.

APPENDIX A.

Legislative History of Pertinent Provisions of Communications Act of 1934.

I. GENERAL.

The pertinent provisions of the Communications Act of 1934[1] are, with very few exceptions, derived from the Radio Act of 1927, as amended, either *verbatim* or with minor modifications. Discussion of particular provisions will be

[1] Act of June 19, 1934, c. 652, 48 Stat. 1064, as amended by Act of June 5, 1936, c. 511, 49 Stat. 1475, and as amended by Act of May 20, 1937, c. 229, 50 Stat. 189; 47 U. S. C. 151 *et seq.*

prefaced with a brief review of the history of the Radio Act of 1927[2] as a whole.

The first statute regulating radio communication as such, the Radio Act of 1912,[3] is important to this history more because of what it omits than because of what it contains. Its cornerstone is Sec. 1, which in substance forbids the use or operation of any apparatus for radio communication as a means of commercial intercourse

> "except under and in accordance with a license, revocable for cause, in that behalf granted by the Secretary of Commerce and Labor upon application therefor."

Congress intentionally withheld from the Secretary any delegation of legislative authority,[4] preferring to incorporate a series of specific regulations in the Act. No statutory standard was provided to guide the Secretary in the granting or denying of licenses and, as construed from time to time by the courts and the Attorney General, the Act limited the Secretary's functions to little more than the conduct of a registration bureau, with no discretion to refuse a license to a citizen of the United States or an American corporation (including a corporation controlled by alien interests), and no power to fix or regulate the frequency (wave-length), hours of operation or power of radio stations, so as to avoid interference, or even to fix the duration of licenses.[5] No provision was made for hearing before

---

[2] Act of Feb. 23, 1927, c. 169, 44 Stat. 1162-1174, 47 U. S. C. 81 *et seq.*

[3] Act of Aug. 13, 1912, c. 287, 37 Stat. 302, 47 U. S. C. 51 *et seq.*

[4] S. Rep. 698, 62d Cong., 2d Sess. (1912); 29 Op. Attys. Gen. 579, (1912); 35 Op. Attys. Gen. 126, (1926).

[5] Opinion of Attorney General Wickersham, Nov. 22, 1912, 29 Op. Attys. Gen. 579; Hoover v. Intercity Radio Co., Feb. 5, 1923, 52 App. D. C. 339, 286 F. 1003 (affirming a decision of the Supreme Court of the District of Columbia, Nov. 23, 1921, not reported but summarized in Stephen Davis, *Law of Radio Communication*, New York, 1927, pp. 37, 41); United States v. Zenith Radio Corporation, N. D. Ill. E. D., April 16, 1926, 12 F. (2d) 614; Opinion of Acting Attorney General Donovan, July 8, 1926, 35 Op. Attys. Gen. 292. See also, Carmichael v. Anderson, July 19, 1926, 14 F. (2d) 166,

the Secretary except by implication in connection with his power to revoke licenses "for repeated violations" of the specific regulations in the Act.[6] No provision was made for appeal from the Secretary's determinations, and aggrieved parties were forced to resort to other methods of obtaining judicial review.[7]

For several years after the advent of broadcasting late in 1920, impending disaster was staved off through a series of four annual industry conferences held 1922-1925 under the auspices of Secretary of Commerce Hoover.[8] Recommendations resulting from these conferences exercised a great influence in directing attention to defects in the statute and were extensively used as a basis for the proposed legislation which ultimately became the Radio Act of 1927.[9]

Unfortunately, before the needed legislation could be enacted, enforcement of the Radio Act of 1912 completely broke down, as of July 9, 1926. There ensued a memorable period of chaos, lasting until after enactment of the Radio Act of 1927 on February 23, 1927, during which some 200 additional broadcast stations crowded their way into the already over-congested ether, while others changed frequency, increased power, and enlarged their hours of oper-

---

In the Zenith Radio Corporation case, Judge Wilkerson suggested that, if construed to repose discretion in the Secretary, the Act would have to be held invalid for lack of any rule or standard. The above-cited cases and opinions are collected in Zollmann, *Cases on Air Law*, 1st ed., 1930.

[6] Radio Act of 1912, Sec. 4, next to last paragraph.

[7] See, in addition to cases cited in footnote 5, Tribune v. Oak Leaves Broadcasting Station, Cir. Ct., Cook County, Ill., Nov. 17, 1926, 68 Cong. Rec. 266, Zollmann's *Cases on Air Law*, 1st ed., p. 298.

[8] These conferences, usually referred to as the First, Second, Third and Fourth National Radio Conferences, are reported in Department of Commerce Radio Service Bulletin, No. 61, May 1, 1922; *Ibid*, No. 72, April 2, 1923, p. 9; Recommendations adopted by the Third National Radio Conference, 1924, Gov. Pr. Off.; Proceedings of the Fourth National Radio Conference, 1925, Gov. Pr. Off.

[9] 67 Cong. Rec. 5478-80, Mar. 12, 1926.

ation, at will. A bedlam of interference resulted, and, as stated in President Coolidge's message of Dec. 7, 1926, urging speedy enactment of legislation,

> "the whole source of this most important public function has drifted into such chaos as seems likely, if not remedied, to destroy its great value." [10]

This situation was the immediate and compelling reason for enactment of the Radio Act of 1927.[11]

The legislative history of the Radio Act of 1927 does not, however, begin during the months immediately preceding its enactment. For a complete account reference must be had not only to the Radio Act of 1912, but also to a long series of bills, beginning in 1908, committee hearings and reports, and debates in Congress.[12]

The series reveals a gradual evolution. Later bills drew extensively on their predecessors and at the same time were gradually enlarged and moulded to meet new problems and broadening concepts as they developed. Committee hearings and debates in Congress constitute successive chapters in a continuous story.

For present purposes, the story may be considered to become important with the introduction by Mr. White (now Senator from Maine) of bills early in 1921, to amend the

---

[10] 68 Cong. Rec. 32.

[11] See Stephen Davis (then Solicitor of the Department of Commerce), *Law of Radio Communication*, Chap. IV; Report of Standing Committee on Radio Law, A. B. A., 1929, 54 A. B. A. Rep. 439-443; General Electric Co. v. Federal Radio Commission, 1929, 58 App. D. C. 386, 31 F. (2d) 630; United States v. American Bond & Mortgage Co., N. D. Ill. E. D. 1929, 31 F. (2d) 448.

[12] John Nicholson, Radio Bills and Resolutions, 74 Cong. Rec. 7055, Mar. 3, 1931, later revised, 75 Cong. Rec. 15716, July 16, 1932, and published by Gov. Pr. Off. This is a substantially complete compilation of radio bills and resolutions introduced in Congress in the 58th to and including the first session of the 72d Congress, presenting their titles, by whom introduced, to what committee referred, and then subsequent legislative history including reference to debates.

Radio Act of 1912.[13] After committee hearings, a revised bill was reported, extensively debated, and (with amendments) passed by the House Jan. 31, 1923.[14] It died in the Senate Committee. This bill continued the Secretary of Commerce as the licensing authority, delegated to the Secretary extensive regulation-making power, and conferred upon him a wide discretion in granting and refusing applications for license, without providing any standard to control his discretion in either respect. It forbade any transfer of a license, or of any rights therein, without the consent in writing of the Secretary, and forbade the issuance of a license or the transfer of a license to aliens or alien-controlled corporations. The maximum license period was fixed at 10 years. No provision was made for hearing before the Secretary except in connection with revocation proceedings. No appeal to the courts was provided; this omission was vigorously criticized on the floor of the House and amendments were offered (but rejected) to cure it.[15] No commission was created but an advisory committee was established to whom the Secretary of Commerce would refer certain limited subjects for examination and report. An effort by amendment to authorize the advisory committee

> "to review any decision, order, rule or regulation made or issued by the Secretary of Commerce under the provisions of this act upon the written request so to do of any person, company, or corporation affected thereby,"

was rejected.[16] The bill also contained several sections aimed at preventing monopoly in radio communication,

[13] H. R. 4132, 67th Cong., introduced April 18, 1921, and H. R. 5889, introduced May 6, 1921. These bills were superseded by H. R. 13773, introduced Jan. 11, 1923.

[14] 64 Cong. Rec. 1617, 1865, 2328-55, 2781-98. The bill is reprinted in full at pp. 2328-30.

[15] 64 Cong. Rec. 2351-3, 2785-8, 2791, 2794-5.

[16] 64 Cong. Rec. 2794-5.

including the original form of what is now Sec. 311 of the Communications Act of 1934.[17]

The next important development was the passing by the Senate on April 7, 1924, of a bill introduced by Senator Howell of Nebraska on March 24, 1924.[18] This bill was very short. Under Sec. 1

> "the ether and the use thereof * * * is hereby reaffirmed to be the inalienable possession of the people of the United States and their Government, but privileges to enjoy such use may be granted as provided by law, for terms of not to exceed two years."

Sec. 3 required that applications set forth that

> "the claims of such licensee or applicant to the use of the ether are in consonance with and limited to the recitations and provisions of this act."

This bill reflected rising apprehensions that, due to defects in the Secretary's authority to limit the period of licenses under the Radio Act of 1912, vested rights might be created that could not be terminated or modified by the Government. In the House this bill was reported with an amendment by the committee but, at the committee's request, was re-referred to the committee where it died.[19] It is important in that it contributed to later bills, and ultimately to the Radio Act of 1927 and the Communications

---

[17] This provision, together with Secs. 313 and 314, has a somewhat separate history, and is traceable to apprehension over monopoly in radio through control of patents, traffic agreements, merger of wire and radio, etc. See Report of the Federal Trade Commission on the Radio Industry, Dec. 1, 1923, in response to H. Res. 548, 67th Cong., Gov. Pr. Off., 1924. Of later origin but analogous purpose was the clause in Sec. 303(i) of the Communications Act giving the Commission power "to make special regulations applicable to radio stations engaged in chain broadcasting." 68 Cong. Rec. 2881, 3031, 3033.

[18] S. 2930, 68th Cong., 65 Cong. Rec. 4915, 5055, and 5733-7. The bill is set forth in full at p. 5735.

[19] 65 Cong. Rec. 5907, 8496; 66 Cong. Rec. 2361.

Act of 1934, the concepts which found expression in provisions asserting the purpose of Congress to maintain federal control over radio transmission and to limit the rights of licensees to the terms, conditions, and periods of their licenses, and requiring appropriate waivers by applicants and conditions in licenses.

Beginning in the 69th Congress, 1925-1927, the two streams largely converged but a new major point and several minor points of difference developed. In the House a series of bills were introduced,[20] extensive committee hearings were held, a bill was favorably reported and after extensive debate and with amendments, this bill was passed on March 15, 1926.[21] Contemporaneously, in the Senate a series of bills had been introduced and hearings had been held.[22] The bill passed by the House was referred to the Senate Committee and, on May 8, 1926, was reported with an amendment consisting of a deletion of the entire bill and a substitution of a new bill differing in many important respects but principally with respect to the character of the licensing authority. As thus amended, after extensive debate and with further amendments on the floor, the bill passed the Senate July 2, 1926.[23]

Because of the disagreement the bill went to conference. In the meantime, the breakdown of law enforcement occurred, followed by President Coolidge's appeal on Dec. 7, 1926, for speedy enactment of legislation. In the mean-

---

[20] H. R. 5589, 9108 and 9971, introduced Dec. 15, 1925, Feb. 9, 1926, and Mar. 3, 1926, all by Mr. White of Maine. The latter is the bill which, with amendments, ultimately became the Radio Act of 1927.

[21] 67 Cong. Rec. 5473-5505, 5555-86, 5645, 5647; H. Rep. 464.

[22] S. 1, introduced Dec. 8, 1925, by Senator Howell, in substance the same bill as had been passed by the Senate during the preceding Congress; S. 1754, 4057 and 4156, introduced Dec. 16, 1925, April 22, 1926, and May 3, 1926, all by Senator Dill of Washington, and S. 3968, introduced April 13, 1926, by Senator Borah of Idaho.

[23] 67 Cong. Rec. 5688, 8960, 11436, 12000, 12230, 12335, 12480, 12497, 12614, 12617-8, 12630; S. Rep. 772.

time, to forestall the acquisition of vested rights in the continued operation of radio stations, and particularly in the use of any particular frequency or channel, a resolution was introduced in the Senate July 3, 1926, was debated in both Houses, and was passed Dec. 8, 1926.[24] It limited the license period for broadcast stations to 90 days and for other radio stations to two years, and required applicants to execute waivers to any right to any wave-length or to the use of the ether "because of previous license to use the same or because of the use thereof".[25]

The conference report was submitted on January 27, 1927,[26] and consisted in recommending the enactment of a compromise bill, somewhat of a patchwork drawing on both versions and inserting new provisions contained in neither. The conference report was extensively debated in both Houses,[27] and the bill was passed and approved Feb. 23, 1927.[28]

The major difference between the House and the Senate bills was summarized by the Conference Committee as follows:

> "* * * The House bill continued original jurisdiction over radio communication in the Department of Commerce, but set up a commission of five members to be appointed by the President and confirmed by the Senate to which the Secretary of Commerce was authorized to refer any matter, the determination of which was vested in him by the bill, and to which any

[24] S. J. Res. 125, introduced by Senator Dill. See 67 Cong. Rec. 12959, 13046, 13067.

[25] Increased belief in the need for such legislation was in part due to claims asserted in litigation in Chicago where one broadcast licensee had resorted to the state court for protection from interference from a "wave-jumper". Tribune v. Oak Leaves Broadcasting Station, Cir. Ct., Cook County, Ill., Nov. 17, 1926, 68 Cong. Rec. 266.

[26] H. Rep. 1886, S. Doc. 200.

[27] 68 Cong. Rec. 2556-80, 2750, 2869, 2882, 3025, 3037, 3117, 3123, 3244, 3257, 3329, 3431, 3569, 3589, 4027, 4109-13, 4148, 4155.

[28] 68 Cong. Rec. 2580, 4155, 4238, 4319, 4493, 4938.

person interested in or aggrieved by any decision of the Secretary might appeal. The Senate bill also created a commission, but gave to it original jurisdiction and complete control over radio regulation." [29]

The compromise arrived at, and incorporated in the Radio Act of 1927, was summarized by the Conference Committee as follows:

"Section 4 of the bill vests in the commission generally original jurisdiction over all radio stations. It gives to the commission much the same authority as was vested originally in the Secretary of Commerce by section 1 (B) of the House bill. The jurisdiction conferred in this paragraph is substantially the same as the jurisdiction conferred upon the commission by section 1 (C) of the Senate amendment. The important change from the provision of the Senate amendment is that while under the Senate bill this original jurisdiction was vested permanently in the commission, the jurisdiction is by this compromise as agreed upon limited to one year in time.

"Section 5 of the bill as agreed upon permits the Secretary of Commerce after one year to exercise all the original powers and authority vested in the commission by the preceding section except the power of revocation of licenses subject to reference, protest, and appeal to the commission. It provides that after one year's time the Secretary shall refer to the commission for its action applications for station licenses or for the renewal or modification of existing station licenses as to the granting of which controversy arises or against the granting of which protest is filed by any party in interest, and any application which the applicant himself requests be transferred to the commission. The section also authorizes the Secretary to refer to the commission any matter concerning which he has authority. It also provides for an appeal to the commission from any decision of the Secretary by any person aggrieved or whose interests are adversely affected thereby. In these instances the commission is to hear the matter so

[29] H. Rep. 1886, p. 16.

brought before it de novo and its decisions are to be final, subject to court review only.

"In addition to the powers conferred upon the Secretary of Commerce with respect to station licenses, section 5 vests in the Secretary of Commerce various administrative duties. The section also confers upon the Secretary control over station operators." [30]

Subsequent developments were to nullify the compromise arrangement and to give effect to the Senate's view. By acts enacted on Mar. 28, 1928, Mar. 4, 1929, and Dec. 18, 1929, the powers and authority vested in the Federal Radio Commission for the first year were continued first for limited periods and finally "until otherwise provided for by law".[31] By act approved June 30, 1932, provision was made for the transfer of the Radio Division of the Department of Commerce, together with its duties and functions, to the Federal Radio Commission.[32]

The Radio Act of 1927 was amended in other important respects. The second paragraph of Sec. 9 was amended Mar. 28, 1928,[33] so as to give definite and unequivocal directions to the Commission as to how to bring about the distribution of broadcast facilities among States and communities "so as to give fair, efficient, and equitable radio service to each of the same," as originally required by that paragraph. Sec. 16, governing appeals, was amended July 1, 1930 by substitution of a totally new section[34] hereinafter discussed.

---

[30] *Ibid*, pp. 16-17.

[31] c. 263, 45 Stat. 373; c. 701, 45 Stat. 1559; c. 7, 46 Stat. 50.

[32] Act of June 30, 1932, Sec. 511, c. 314, 47 Stat. 417. The transfer became effective under executive order of the President July 20, 1932. On August 2, 1932, the Commission absorbed the Radio Division and designated it as the Division of Field Operations. 2 Jour. Radio Law, 752.

[33] c. 263, 45 Stat. 373.

[34] c. 788, 46 Stat. 844.

The major purposes of the Radio Act of 1927, in the light of its provisions and its legislative history, and evidenced over and over again in the debates, were

1. To confer an adequate delegation of legislative or regulation-making power on the licensing authority, largely for the prevention of interference, and to assure a maximum of efficient use of the ether under a standard (*e.g.*, public convenience, interest or necessity).

2. To confer adequate authority on the licensing authority to limit the number of persons engaged in radiocommunication, to choose persons for this purpose who were qualified (excluding alien interests and monopolies), and at the same time to assure adequate radio service (including, in the case of broadcasting), a fair and equitable distribution of broadcast facilities over the country, by applying a suitable standard (*e.g.*, public interest, convenience or necessity) to the granting and refusing of applications and to the fixing of terms and conditions in licenses, without exercising censorship over radiocommunications and without abridging freedom of speech.

3. To prevent the acquisition or assertion of vested rights in the continued operation of radio stations and particularly in the continued use of a frequency or wave-length, by specifying maximum license periods, by Congressional declarations of purpose, and by requirements of the execution of waivers by applicants and of the insertion of conditions in licenses.

4. To confer on all interested parties (including both applicants and parties aggrieved) a right of hearing before the licensing authority, and to confer on applicants and licensees subjected to revocation proceedings the right to judicial review (extended in 1930 to persons aggrieved by decisions of the licensing authority).

II. THE PROVISION GOVERNING APPEALS.

Sec. 402(b) to (f)[1] of the Communications Act of 1934 reproduces, almost *verbatim*, the provisions of the amended Sec. 16 of the Radio Act of 1927, approved July 1, 1930.[2] The only variations are immaterial to the issues of this case.[3]

For present purposes, the legislative history of the amended Sec. 16 of the Radio Act of 1927 is important. This legislative history covers (1) a scrutiny of Sec. 16 of the Radio Act of 1927 in its original form, together with pertinent facts in its history, (2) defects which developed in the operation of Sec. 16 in the period 1927-1930, (3) efforts made to correct those defects, resulting in the amendment of July 1, 1930, and (4) unsuccessful efforts in Congress to change the phraseology of the amended Sec. 16 during the period 1930-1934.

---

[1] Reprinted in Petitioner's Brief, pp. 66-68.

[2] c. 788, 46 Stat. 844.

[3] The variations, other than minor matters of phraseology, are as follows:

1. Through oversight, the Act of July 1, 1930 omitted specifically to provide for an appeal in connection with Commission decisions granting or denying applications for construction permits. The circumstances explaining the oversight are recounted in 1 Jour. Radio Law 381-6. See Durham Life Ins. Co. v. Federal Radio Commission, 55 F. (2d) 537; Pacific Development Radio Co. v. Federal Radio Commission, 55 F. (2d) 540, in which the omission was supplied by judicial constructions.

2. The Act of July 1, 1930 provided for an appeal "by any licensee whose license is revoked, modified, or suspended by the commission" and "by any other person, firm, or corporation aggrieved or whose interests are adversely affected * * * by any decision of the commission revoking, modifying, or suspending any existing station license." Under the Communications Act of 1934 such licensees and persons must apparently resort to Sec. 402(a) for judicial review.

3. The Act of July 1, 1930 contains a proviso that it shall not relate to or affect pending appeals, omitted from the later statute.

(a) *Sec. 16 of the Radio Act of 1927 in its Original Form.*

Sec. 16 of the Radio Act of 1927[1] read as follows:

"Sec. 16. Any applicant for a construction permit, for a station license, or for the renewal or modification of an existing station license whose application is refused by the licensing authority shall have the right to appeal from said decision to the Court of Appeals of the District of Columbia; and any licensee whose license is revoked by the commission shall have the right to appeal from such decision of revocation to said Court of Appeals of the District of Columbia or to the district court of the United States in which the apparatus licensed is operated, by filing with said court, within twenty days after the decision complained of is effective, notice in writing of said appeal and of the reasons therefor.

"The licensing authority from whose decision an appeal is taken shall be notified of said appeal by service upon it, prior to the filing thereof, of a certified copy of said appeal and of the reasons therefor. Within twenty days after the filing of said appeal the licensing authority shall file with the court the originals or certified copies of all papers and evidence presented to it upon the original application for a permit or license or in the hearing upon said order of revocation, and also a like copy of its decision thereon and a full statement in writing of the facts and the grounds for its decision as found and given by it. Within twenty days after the filing of said statement by the licensing authority either party may give notice to the court of his desire to adduce additional evidence. Said notice shall be in the form of a verified petition stating the nature and character of said additional evidence, and the court may thereupon order such evidence to be taken in such manner and upon such terms and conditions as it may deem proper.

"At the earliest convenient time the court shall hear, review, and determine the appeal upon said record and evidence, and may alter or revise the decision appealed from and enter such judgment as to it may seem just. The revision by the court shall be confined to the points set forth in the reasons of appeal."

[1] c. 169, Sec. 16, 44 Stat. 1169.

As pointed out in Part I of this review, "licensing authority" originally meant the Federal Radio Commission during the first year, and thereafter the Secretary of Commerce. Sec. 5, covering review of the Secretary's determinations by the Commission, discussed in more detail in Part III of this review, provided in part:

> "Decisions by the Commission as to matters so appealed and as to all other matters over which it has jurisdiction shall be final, subject to the right of appeal herein given."

Study of the legislative history and antecedents of Sec. 16 reveals a continuous effort from the outset to obtain statutory provision for judicial review of the licensing authority's determinations.

In the first general bill on the subject of radio regulation, introduced Mar. 6, 1908, Sec. 4 provided in part:

> "* * * An appeal as to both law and fact from the order or decision of the Secretary of Commerce and Labor in any case involving the right of any person or corporation to obtain or retain a license shall lie to the circuit court of appeals of the jurisdiction in which such person resides or such corporation is formed, as in the case of other appeals to the said court from the circuit courts of the United States."[5]

Neither the bills which led directly to the Radio Act of 1912, nor the Act itself,[6] provided for any appeal. Although there is some reference to the danger of arbitrary power (with regard to the delegation of regulation-making power to the Secretary), we have been able to find nothing pertinent to the matter of appeals in the bills, the reports or the debates. Because of the omission in the Radio Act of 1912,

---

[5] S. 5949, 60th Cong., introduced by Mr. Hale. The same provision appears in Sec. 4 of S. 7061, 61st Cong., introduced by Mr. Depew Mar. 10, 1910. These bills died in committee.

[6] The Radio Act of 1912 grew out of S. 6412, 62d Cong., which was a committee bill drawn from three other bills.

dissatisfied parties resorted to mandamus and other methods for obtaining judicial review.[7]

The next bill of general regulative scope with pertinent provisions was introduced Mar. 8, 1920.[8] It proposed a National Radio Commission. Sec. 28 of this bill provided:

> "Section 28. That orders of the National Radio Commission *granting* or denying applications for licenses for radio stations or radio operators, or revoking, suspending, modifying, or declaring void any licenses for such stations or operators previously granted, or imposing penalties for alleged violations of the provisions of this Act, may be reviewed on petition by any of the parties affected thereby to the Court of Appeals of the District of Columbia. Such petition shall be filed within thirty days from the date of the order of the National Radio Commission sought to be reviewed and a copy thereof shall forthwith be served upon the National Radio Commission. The National Radio Commission shall forthwith answer said petition setting forth the grounds upon which its order was based and shall file in the said court a transcript of the proceedings had before it; and thereupon the said court shall proceed expeditiously to hear and determine said petition and to affirm, set aside, or modify the order of the National Radio Commission and the order of said court shall be final. The said court shall have power by appropriate orders to regulate all matters of practice in connection with the review of such cases." (Italics supplied)

[7] Hoover v. Intercity Radio Co., 1923, 52 App. D. C. 339, 286 F. 1003; United States v. Zenith Radio Corporation, 1926, 12 F. (2d) 614; Carmichael v. Anderson, 1926, 14 F. (2d) 166; Tribune Co. v. Oak Leaves Broadcasting Station, 1926, 68 Cong. Rec. 266.

[8] 4038 66th Cong., by Mr. Poindexter. It died in committee. See Sen. Doc. 248, 66th Cong. Because of the World War during the intervening period, most of the legislation and proposed legislation had to do with Government operation of radio stations and the cessation thereof.

The parallel between the scope of appeal provided by the foregoing and that provided by the present law is striking.[9]

The bills passed respectively by the House and the Senate in 1923 and 1924 provided no right of appeal. In connection with the House bill,[10] however, amendments were offered to cure this omission and, although vigorously urged, were rejected. One of these proposed amendments was as follows:

> "The action of the Secretary of Commerce under this section or any other section of this act shall be subject to review by the courts at the instance of any interested party."[11]

Another was as follows:

> "*Provided*, That from any action of the Secretary of Commerce in refusing or revoking a license, the person whose license is revoked or refused shall have the right to appeal to a court of competent jurisdiction, which court shall have the power to confirm, modify, or reverse the decision of the Secretary, but the decision of the Secretary of Commerce shall not be suspended pending the decision of such court."[12]

A third would have given full power and authority to the advisory committee established by the bill to review any determination of the Secretary of Commerce upon the written request of any person "affected thereby".[13] In connection with the Senate bill,[14] the House Committee reported it with an amendment including an appeals provision as follows:

---

[9] Mr. Poindexter introduced a substantially identical bill in the next Congress, S. 31, 67th Cong., April 12, 1921, but it also died in committee.

[10] H. R. 13773, 67th Cong.

[11] 64 Cong., Rec. 2351-3.

[12] 64 Cong. Rec. 2352, 2784-8, 2790-1.

[13] 64 Cong. Rec. 2784, 2794-5.

[14] S. 2930, 68th Cong.

> "Sec. 3. Any applicant for a permit or license whose application is refused by the Secretary of Commerce, and any holder of a license revoked by the Secretary of Commerce, shall have the right to appeal from such refusal or revocation to the Court of Appeals of the District of Columbia by filing with said court within twenty days after the decision complained of is rendered, notice in writing of said appeal and of the reasons therefor."

The committee report accompanying the amended bill stated in part:

> "The pending bill, therefore, seeks to give powers essential to these ends to the Secretary of Commerce, but it aims to prevent an arbitrary and unjust exercise of powers by definition of them and by providing in proper cases for an appeal to the Court of Appeals of the District of Columbia."[15]

There is nothing illuminating in the Senate debates on this bill, so far as appeals are concerned.[16]

The Fourth National Radio Conference, held November 9-11, 1925, included among its recommendations:

> "That the legislation shall contain provisions for due appeal from final decisions of the Secretary of Commerce to the appropriate court."[17]

In the 69th Congress, beginning in December, 1925, practically all the bills introduced and seriously considered contained provisions for appeals substantially like those of Section 16 as finally enacted, or sufficiently so as not to jus-

---

[15] H. Rep. 719, 68th Cong., May 13, 1924.

[16] There was also introduced in the 68th Cong., H. R. 7357 by Mr. White on Feb. 28, 1924. Its provisions were identical with those of S. 2930 as amended by the House Committee, except in numbering and except for the fact it omitted the provision for appeal.

[17] 67 Cong. Rec. 549. See Proceedings of the Fourth National Radio Conference, Gov. Pr. Off., 1925, p. 35.

tify detailed exposition of the variations.[18] Only two provisions deserve particular mention. The appeal section of certain of the Senate bills also contained the following:

> "All other decisions of the Secretary of Commerce, or of the Radio Commission hereinafter established, shall be subject to the right of appeal by the party *aggrieved* to the district court of the United States for the district in which the appellant resides upon the same terms of procedure as hereinbefore provided for an appeal to the Court of Appeals of the District of Columbia."[19] (Italics supplied)

The House bill, as passed by the House, also contained the following:

> "Any person, firm, company, or corporation interested in or aggrieved by any decision of the commission with respect to the *granting* or refusal of a permit or license or the revocation of or the refusal to revoke a license, may appeal therefrom to the Court of Appeals of the District of Columbia. Notice of said appeal shall be given by service upon the secretary of said commission, prior to the filing thereof, of a certified copy of said appeal and the reasons therefor. Procedure upon said appeal shall be the same as in cases of appeal from decisions of the Secretary of Commerce."[20] (Italics supplied)

A strong minority committee report was filed by Mr. Davis of Tennessee in connection with the House bill on February 27, 1926.[21] While it was principally devoted to

---

[18] See Sec. 2(H. of H. R. 9971, 69th Cong., as passed by the Senate July 2, 1926; Sec. 3 of H. R. 9971 as passed by the House Mar. 15, 1926; Sec. 3 of H. R. 9108 and Sec. 3 of H. R. 5589; Sec. 3 of S. 4156, and Sec. 10 of S. 1754. Most of the differences have to do with the identity of the licensing authority and the question whether appeals from orders of revocation should also lie to the district court in the district where the apparatus is operated.

[19] S. 1754 and S. 4057, 69th Cong.

[20] H. R. 9971, Sec. 8. See also Sec. 7 of H. R. 9108; Sec. 8 of H. R. 5589; Sec. 15 of S. 1754.

[21] H. Rep. 404, 69th Cong., 1st Sess., to accompany H. R. 9108.

arguing that the bill's provisions against monopoly were inadequate, it also criticized the provisions for review of the Secretary's decisions, saying:

> "Another important reason for the establishment of a commission of a quasi judicial nature is in order that it may speedily hear and determine appeals from the Secretary of Commerce. *During the consideration of legislation upon radio there has been a general demand that a right of appeal from the Secretary of Commerce should be accorded aggrieved parties,* and the Secretary of Commerce and the Solicitor of the Department of Commerce likewise took the position that such appeal should be granted. The pending bill provides for an appeal to the Court of Appeals of the District of Columbia by 'any applicant for a permit or license whose application is refused by the Secretary of Commerce and any holder of a license revoked by the Secretary of Commerce.' *However, the opportunity for a review of the decision of the Secretary of Commerce thus accorded is a shadowy one indeed.* The bill confers absolute authority and discretion upon the Secretary of Commerce to grant or refuse to grant licenses, to fix wave lengths and power to be used, to revoke licenses, etc. It is well settled that the courts will not reverse or alter the discretion of an administrative officer except in a clear case of abuse of discretion. * * *."[22] (Italics supplied)

After contending that the provisions for the proposed Commission were defective to meet the need, the minority report stated:

> "The pending bill recognizes the propriety of appeals from the action of the Secretary of Commerce. The commission should be in session prepared to speedily hear and determine such appeals. Not only should the interested parties have the right to present all competent evidence and arguments, but the commission should have a broad and full knowledge of the

[22] *Ibid*, pp. 19-20.

radio problem generally, in order to intelligently decide the individual cases appealed to them.[23]

* * * * * * * * *

"I further suggest that *any person in interest feeling aggrieved* should have the right of appeal from the action of the commission to the Court of Appeals of the District of Columbia or some other Federal court, and that such court have the right of review of the questions of law, but that the finding of facts of the commission shall be conclusive."[24] (Italics supplied)

Otherwise, neither in the committee reports nor in the debates is anything stated by proponents of the bill regarding the construction to be given the appeals section on matters of interest to this discussion. There was considerable controversy over the question whether appeals from revocation orders should go to the Court of Appeals or to the district courts over the country[25] and in connection with the procedure (including appeals) where the applicant was charged with being a monopoly.[26] Mr. White described the appeals section as follows:

"* * * we have provided an appeal to the Court of Appeals of the District from decisions of Secretary or Commission in major matters."[27]

Mr. Davis offered amendments which carried out his minority views, including the following:

"Any person, firm, company, or corporation who feels aggrieved because of the refusal of the Secretary of Commerce to grant a permit or license, or to assign a satisfactory wave length, or *who feels aggrieved* because the Secretary of Commerce has granted a particular permit or license or wave length, or *who feels*

[23] *Ibid*, p. 22.
[24] *Ibid*, p. 23.
[25] 67 Cong. Rec. 5488, 5566-8, 5576-7.
[26] *Ibid*, 5504, 5557, 5561, 5564.
[27] 67 Cong. Rec. 5489.

aggrieved because of the revocation of a permit or license or the change of a wave length, or because of any other action or decision under the provisions of this act, shall have the right to appeal from such action of the Secretary of Commerce by filing with said commission, within 20 days after the decision or action complained of is effective, notice in writing of said appeal and the reasons therefor.

"The Secretary of Commerce shall be notified of such appeal by service upon him prior to the filing thereof of a copy of said appeal and of the reasons therefor.

"The case shall be heard de novo by the commission under regulations adopted by the commission for the hearing of such appeals, and the Secretary of Commerce and *all parties interested or aggrieved* shall be permitted to present any competent evidence. An appeal *by either party* shall lie from the decision of the commission to the Court of Appeals of the District of Columbia in the same manner as appeals are granted, perfected, and heard upon other decisions rendered by the commission."[28] (Italics supplied)

The bill as it passed the Senate contained no provision for appeal, the Senate committee having, by a divided vote, stricken out the House provision. An amendment restoring substantially the same language was, however, offered

---

[28] 67 Cong. Rec. 5484. See also the amendment Mr. Davis proposed at p. 5485 to substitute for

"any person interested in or aggrieved by any decision of the Secretary of Commerce"

the following:

"Any person, firm, company, corporation or municipal corporation *interested in, aggrieved, or in any way affected* or *inconvenienced* by any decision of the Secretary of Commerce with respect to the granting or refusal of a permit or license or the revocation or refusal to revoke a license." (Italics supplied)

The substance of this amendment appeared in the bill as it passed the House.

and adopted on the floor of the Senate.[29] This was not without opposition.[30]

Neither the Conference reports nor the debates thereon contain anything of interest on the subject.[31]

(b) *Defects in the Operation of Sec. 16.*

For over a year and a half after the establishment of the Federal Radio Commission, no appeals from its decisions were heard or determined,[32] and no particular attention was attracted to its defects. With the fall of 1928 and the early winter of 1929, however, a series of appeals demonstrated its inadequacies in that (1) it conferred the right of appeal only on applicants whose applications had been denied, but not on others whose rights might be adversely affected by the *granting* of another's application, and (2) review by the Supreme Court was excluded by the fact that the Court of Appeals acted in a superior administrative and not a judicial capacity in reviewing decisions of the Commission.[33] These defects were repeatedly called to the attention of Congress and were the subject of widespread comment and criticism.

In a report on needed amendments made to the House Committee on Merchant Marine and Fisheries, which then had proposed radio legislation under consideration, the general counsel of the Commission stated:

> "Unfortunately, however, Section 16 is so worded as to provide for an appeal only from decisions of the

---

[29] 67 Cong. Rec. 12354, 12507-8.

[30] 67 Cong. Rec. 12354-5.

[31] 68 Cong. Rec. 2750-4148. See pp. 2563, 2565, 2566, 2579, 2869, 3029.

[32] Prior to the fall of 1928, five appeals were taken to the United States Court of Appeals for the District of Columbia, but all were voluntarily dismissed. 1 Jour. Radio Law, 102. Report of Standing Committee on Radio Law, A. B. A., 54 A. B. A. Rep. 462.

[33] Federal Radio Commission v. General Electric Co., 281 U. S. 464.

licensing authority refusing certain kinds of applications. * * * This section makes no provision for appeal by anyone except parties whose applications have been denied." [34]

The same general counsel (after resignation from office) later presented the need for amendment before the Senate Committee on Interstate Commerce, which likewise had proposed radio (and communications) legislation under consideration, in part as follows:

"It [Sec. 16] does not provide an appeal for anyone but the defeated applicant. It is almost impossible, particularly in the broadcast band, to have a decision in favor of the applicant which does not affect someone else than the applicant. * * * The Commission is regularly giving such a station a right to participate in the hearing although the statute does not require it. * * * But he does not have any standing on appeal if his wave length is taken away from him and given to the applicant station." [35]

In the Report of the Standing Committee on Radio Law of the American Bar Association, 1929, it was stated:

"In no respect is the Radio Act of 1927 more unsatisfactory than in the appellate procedure provided.

"Section 16 gives the right of appeal only to applicants whose applications * * * have been *denied* by the Commission * * *. No right of appeal is given to a licensee whose rights under an existing license or construction permit may be vitally injured or destroyed by the granting of another's application."

After discussing the situations presented by several pending appeals, the Committee stated:

"No better demonstration of the inadequacy of the appeal provisions of the Radio Act of 1927 could be found than the situation raised by these appeals." [36]

---

[34] United States Daily, Jan. 18, 1929.

[35] Hearings on S. 6, 71st Cong. 1st Sess., p. 149, May 11, 1929.

[36] 54 A. B. A. Rep. 461, 468.

The committee recommended, among other things, that Sec. 16

> "be amended to give interested respondents the same right of appeal and to participate in appeals as unsuccessful applicants now have."

and, at its annual meeting that year, the American Bar Association approved this recommendation, together with others.[37] The committee which thereafter was called the Standing Committee on Communications, continued to urge this amendment in its report the next year.[38]

The appeals actually taken during this period presented a variety of anomalous situations in which, by one device or another, parties adversely affected by the Commission's *granting* of another's application, or who would be adversely affected if the reviewing court should reverse a commission decision denying another's application, sought to participate in the proceedings on appeal.[39] In some cases the Court of Appeals permitted actual participation in the filing of briefs and argument by such interested parties, admitted as *amici curiae*. In certain of the cases it was being contended in the Court of Appeals that, if Sec. 16 were construed to give the Court of Appeals power to render a judgment adversely affecting any person other than the immediate parties, i.e., the appellant and the Commission, it was

---

[37] 54 A. B. A. Rep. 477, 89-90.

[38] 55 A. B. A. Rep. 393.

[39] See the appeal taken by the State of New York along with that of the General Electric Co, General Electric Co. v. Federal Radio Commission, 1929, 31 F. (2d) 630; Great Lakes Broadcasting Co. v. Commission and Agricultural Broadcasting Co. v. Commission, 1929, 37 F. (2d) 993; Chicago Federation of Labor v. Commission, 1930, 41 F. (2d) 422; the Short-Wave Appeals (four cases), 1931, 46 F. (2d) 602; Journal Co. v. Commission (four appeals), 1931, 48 F. (2d) 461. Most of these situations are described and commented on in Appeals from Decisions of the Federal Radio Commission, 1 Jour. Air Law 274.

invalid.[40] Sec. 16 was amended before it became necessary for the Court to pass on this contention.

The most significant case was, perhaps, Journal Company v. Commission,[41] in which the Journal Company, licensee of an existing station in Milwaukee, was, without notice or opportunity for hearing, subjected to increased interference and a substantially reduced service area through Commission action shifting stations on the same frequency in Florida. The Journal Company first appealed prior to July 1, 1930, contending that

> "by an increase in power to another station already assigned to the channel, the commission had in effect refused appellant's application for renewal."[42]

The Court of Appeals dismissed this appeal, saying:

> "Appellant was prejudiced, not by a refusal to renew its application, but by the commission's action with respect to other stations. Under the Act of 1927 no appeal was allowed in such circumstances. Recognizing this apparent defect in the statute, Congress, in the Act of July 1, 1930 (46 Stat. 844 [47 U. S. C. A. § 96]), amending section 16 of the 1927 Act, provided for appeals by 'any other person, firm, or corporation aggrieved or whose interests are adversely affected by any decision of the commission granting or refusing any such application or by any decision of the commission revoking, modifying, or suspending an existing station license.'"

After amendment of Sec. 16, the Journal Company took further appeals, as a person "aggrieved or whose interests are adversely affected," and on these appeals, the Court reversed the Commission.

---

[40] The Short-Wave Appeals, 1931, Nos. 4987-91. See 1 Jour. Air Law 280.

[41] 1931, 48 F. (2d) 461.

[42] *Ibid.* p. 463.

(c) *Legislative History of Act of July 1, 1930,*[43] *Amending Sec. 16 of the Radio Act of 1927.*

On Mar. 4, 1930, a bill was introduced in the House by Mr. White of Maine to remedy various procedural and other defects in the Radio Act of 1927.[44] After consideration of this bill in committee, a revised bill[45] was introduced by Mr. White, and on April 30, 1930, after debate and amendment, was passed by the House.[46] Both bills contained an amendment of Sec. 16 substantially in the form it ultimately became law. In the Senate the bill was referred, on May 1, 1930, to the Senate Committee on Interstate Commerce, from which it did not emerge until Feb. 11, 1931, when it was reported with an "amendment" consisting of a complete revision. Its later history is unimportant since it never became law.[47]

On May 12, 1930, a joint resolution was introduced in the Senate[48] to transfer the functions of the Radio Division of the Department of Commerce to the Federal Radio Commission, and was passed by the Senate May 22, 1930.[49] On May 24, 1930, the House Committee on Merchant Marine and Fisheries reported the joint resolution with an amendment consisting of adding the proposed new Sec. 16.[50] Because of vigorous opposition to the original contents of the joint resolution, objection prevented its consideration on the unanimous consent calendar.

---

[43] c. 788, 46 Stat. 844.

[44] H. R. 10473, 71st Cong.

[45] H. R. 11635, 71st Cong., introduced Apr. 14, 1930.

[46] 72 Cong. Rec. 7051, 7099, 8049, 8055; H. Rep. 1179.

[47] At the close of the 71st Congress on Mar. 4, 1931, after having been passed by the Senate with amendments and conferees having been appointed, the bill was still lying on the Speaker's table in the House.

[48] S. J. Res. 176, 71st Cong.

[49] 72 Cong. Rec. 8711, 9190, 9356; S. Rep. 694.

[50] 72 Cong. Rec. 9485, 9520, 11523-4; H. Rep. 1633.

On May 24, 1930, Mr. Lehlbach of New Jersey introduced a bill[51] consisting solely of the new Sec. 16. This bill was reported favorably, debated, amended, and passed the House.[52] Likewise in the Senate it was reported favorably, and was passed, becoming law July 1, 1930.[53]

As shown by the foregoing, the legislative history of the amended Sec. 16 extended back through several bills and the committee hearings held thereon. It was the one amendment to the Radio Act of 1927 which everyone agreed was vitally necessary. In addition, the Senate Committee on Interstate Commerce had been holding extensive hearings from May 8, 1929, to June 7, 1929, and from Dec. 4, 1929, to Feb. 26, 1930, in connection with a bill to establish a commission on communication in the course of which the need for amending Sec. 16 had been brought to the Committee's attention.[54]

In the course of the debate on the bill passed by the House on April 30, 1930, Mr. Davis of Tennessee stated:

> "*Mr. Davis*: These changes are practically all of a procedural and administrative character. As has been explained by the gentleman from New Jersey, the two outstanding changes are those relating to the hearings before the commission and those relating to appeals from the commission to the courts. The act of 1927 was perhaps not comprehensive and definite enough in these particulars. At any rate, differences of opinion arose as to the proper interpretation of the law, both with respect to hearings and the right of parties thereto and also in respect to appeals, and interpretations have been made that were not in accord with the purpose and views of the committee which reported the original bill.

[51] H. R. 12599, 71st Cong.; unfortunately, it followed the language of H. R. 10473 instead of H. R. 11635, and, through oversight, mention of applications for construction permits was omitted.

[52] 72 Cong. Rec. 9521, 9694, 11524, 11529; H. Rep. 1665.

[53] 72 Cong. Rec. 11553, 11749, 11881, 11956, 11958, 12019, 12510.

[54] Hearings on S. 6, 71st Cong. See preceding sub-heading.

"With respect to the subject of hearings, the amendments proposed make it very clear and definite how the hearings shall be held, *and insure any interested party the right to be heard. The same is true with respect to the right of appeal to the courts. Any party aggrieved* is given the right to appeal to the court; and then we have made it clear in the proposed amendment that an appeal shall lie to the Supreme Court of the United States upon a proper showing by petition for a writ of certiorari."[55] (Italics supplied)

Again, in connection with the bill which became law July 1, 1930, Mr. Davis stated:

"*Mr. Davis*: Mr. Speaker and Members of the House, I am much gratified by the passage of this bill to amend—in fact, rewrite—the appeal section of the present radio act. It is not only in the interest of the public, but in the interest of orderly procedure. I never did like the language of section 16 of the radio act. When the bill culminating in that act was being considered, I criticized the appeal provision both in the committee and in the House. I insisted that the provision was ambiguous and would prove unsatisfactory and ineffective. In my minority views filed on said bill in the Sixty-ninth Congress, in discussing the appeal provision, which the bill we have just passed supplants, I declared that the 'opportunity for a review is a shadowy one, indeed'.

"In suggesting a number of amendments to the pending bill in said minority views, I stated with respect to the appeal provision:

"'I further suggest that any person in interest feeling aggrieved should have the right of appeal from the action of the commission to the Court of Appeals of the District of Columbia or some other Federal court, and that such court have the right of review of the questions at law, but that the findings of fact of the commission shall be conclusive.'"[56]

---

[55] 72 Cong. Rec. 8052, April 30, 1930.

[56] 72 Cong. Rec. 11530, June 23, 1930. Mr. Davis' reference to his minority views is to his minority report on H. R. 9108, H. Rep. 404, 69th Cong., 1st Sess., pp. 20, 22, 23, Feb. 27, 1926.

The only other references to the amended Sec. 16 in the debates do not have to do with the question under consideration.[57]

(d) *Further Efforts to Amend Sec. 16 of the Radio Act of 1927.*

Some helpful information can be obtained from efforts made further to amend Sec. 16 during the period 1930-1934.

In the 72nd Congress Mr. Davis introduced a bill[58] somewhat similar to the bill introduced in the preceding Congress,[59] covering a number of changes, both procedural and substantive, in the Radio Act of 1927. It carried an elaborate new appeal section with a number of changes, some of which are not pertinent to this review. It provided for an appeal from any commission decision or order "granting or denying, in whole or in part" the several kinds of applications (including construction permits), and that the appeal might

> "be taken by any party to the proceeding in which the order was made, whether an applicant, licensee, permittee, or intervenor, except that, in case of a decision or order revoking or suspending a station license, the appeal may be taken by the licensee only."

It also provided that

> "any party to the proceeding before the commission may join in the appeal or appear as a party respondent by filing with the court" etc.

and that

> "any person may at any time be made a party to the proceedings by the court if, in the opinion of the court,

[57] 72 Cong. Rec. 8052, statement of Mr. Lehlbach of New Jersey.
[58] H. R. 7716.
[59] H. R. 11635, 71st Cong., discussed under previous subheading.

his presence is necessary or proper to a complete determination of the case."

The bill passed the House February 10, 1932.

In the Senate, a new and even more elaborate Section 16 was inserted in the bill, preserving, however, a great deal of the House bill's phraseology. The right to appeal was extended to the same list of parties but qualified by the clause "who is aggrieved by said order". The right of any party to the proceeding to join in the appeal or appear therein as respondent was made contingent

> "upon a showing of interest in the subject-matter and reasonable cause for failure to appear before the commission".

It was further provided that

> "The court shall not have power to make any order or enter any judgment affecting any substantial interest of any person who has not appeared or been made a party to the proceedings upon said appeal".

The bill passed the Senate February 10, 1933.[60] A conference report was agreed to but the bill never became law because of a pocket veto by the President.

Nothing of particular significance is to be found in the House or Senate committee reports, or in the debates in the House, although during the latter a number of other aspects of the appeal section were discussed.[61] In the Senate debates, Senator White had the following to say:

> "This appeal section has been scrapped in its entirety and a new and what I consider novel appeal section has been substituted for it. The new section pro-

---

[60] 76 Cong. Rec. 3770.

[61] 75 Cong. Rec. 3680-3705; H. Rep. 221, Jan. 21, 1932; S. Rep. 564, Apr. 14, 1932. In the House Committee Report (p. 7) it was stated

> "All the provisions in the bill have been considered by the Federal Radio Commission and its counsel, and have their approval and recommendation."

vides generally for appeal to the Court of Appeals of the District of Columbia.

* * * * * * * * *

"Paragraph (a) of section 16 as proposed to be amended designates and limits the parties who may appeal. They are an applicant, a licensee, a permittee, or intervenor. No one else may appeal from a decision of the Radio Commission, but there is nothing in the law which says who may be a permittee, who may be an intervenor, or how a person may become either a permittee or intervenor in a proceeding before the Federal Radio Commission. *But whatever it means, it is a limitation upon the present right of appeal, for the present right of appeal is among others to any person adversely affected by a decision of the Federal Radio Commission. So here we have a section limiting the right of appeal from that granted by present law.*

"Because of the peculiar characteristics of radio, because of the fact that a controversy may arise in the State of Missouri and that controversy may involve a station in West Virginia or Maine or Indiana or California, I think it unwise in the extreme to limit, as is here proposed to be done, this right of appeal. I think the right of appeal should be in *any person adversely affected or aggrieved* by a decision of the Federal Radio Commission."[62] (Italics supplied)

In 1934, in the course of the hearings on the bill that eventually became the Communications Act of 1934, the Federal Radio Commission, through its chairman, made a concerted effort to have Congress *restrict* the right of appeal to (1) any applicant for renewal of license whose application is refused by the Commission, and (2) any licensee whose license is revoked by the Commission. The reason advanced was that in such cases "the right to existence of a radio station is involved", whereas in other

[62] 76 Cong. Rec. 5208, Feb. 28, 1933. See also Senator White's criticisms of the proposed appeals section in the Hearings on H. R. 7716 before the Senate Committee on Interstate Commerce, Mar. 11-12, 1932, pp. 9, 21, and Dec. 22, 1932, p. 49.

cases it is not.[63] Both the House and the Senate Committees rejected the suggestion.[64]

---

[63] Hearings on H. R. 8301, 73rd Cong., before House Committee on Interstate and Foreign Commerce, Apr. 11, 1934, p. 80; Hearings on S. 2910, 73rd Cong., before Senate Committee on Interstate Commerce, Mar. 9, 1934, pp. 43-4.

[64] On Apr. 19, 1934 the Senate Committee reported S. 3285 (succeeding the original S. 2910) but did not adopt the Commission's recommendation (S. Rep. 781) and S. 3285, providing a full right of appeal, passed the Senate May 15, 1934. On June 1, 1934 the House Committee reported a substitute for S. 3285, in which Sec. 16, as amended July 1, 1930, was reenacted. As the result of a conference, Sec. 402(b) to (f) emerged in its present form (Conference Rep. 1918, 73rd Cong., June 9, 1934).

III. THE PROVISION GOVERNING HEARINGS BEFORE THE COMMISSION ON APPLICATIONS.

Section 309(a) of the Communications Act of 1934[1] reproduces, practically *verbatim*, the first paragraph of Section 11 of the Radio Act of 1927 as originally enacted.[2] The latter reads as follows:

> "Sec. 11. If upon examination of any application for a station license or for the renewal or modification of a station license the licensing authority shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the licensing authority upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.
>
> * * * * *"

The legislative history of this provision will be reviewed solely in the light of the issues in this case. There are, however, other provisions of the Communications Act which must be taken into account, particularly Sections 303(f), 310(b), 312(a) and (b), 319(a) and (b), and 405.[3]

(a) *Sec. 11 of the Radio Act of 1927.*

The first paragraph of Section 11 of the Radio Act of 1927 was the product of the Conference Committee, and, with one exception, neither it nor any counterpart appeared in any of the bills introduced either in that or in prior Con-

[1] Reprinted in the Appendix to Petitioner's Brief, pp. 59-60.

[2] The only difference is the substitution of "Commission" for "licensing authority".

[3] These are all reprinted in the Appendix to Petitioner's Brief.

gresses.[4] The reason for this, and for what seemingly is an unnecessary repetition of language as between the opening portions of Sections 11 and 9[5], is not difficult to ascertain.

The series of bills in the House and Senate which resulted in the Radio Act of 1927 all contain provisions corresponding to the first two paragraphs of Section 9 of that Act, of which the following is typical;

"Sec. 2. • • •

• • • • •

"(C) The Secretary of Commerce, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, may grant to any applicant therefor a station license provided for in sections 1 and 2 hereof.

"In considering applications for licenses and renewals of licenses, when and in so far as there is a

---

[4] The one exception was Senator Borah's bill, S. 3968, 69th Cong., introduced April 13, 1926, which read in part:

"Sec. 10. • • •

• • • • •

"(d) Upon the refusal to issue any license or permit and upon the suspension or revocation of any license or permit by the Commission under this Act, the commission shall make an order to such effect and give notice thereof to the applicant or holder. Within thirty days after such notice the applicant or holder may file a written request with the commission for a public hearing upon such order. The Commission upon receipt of the request shall forthwith arrange for a public hearing • • •.

• • • • •

"The refusal, suspension, or revocation of the license or permit shall be invalid unless opportunity for hearing is afforded, notice served or sent, and decision rendered within the respective times prescribed by this subdivision.

"(e) The decision of the commission may be reviewed by the Court of Appeals of the District of Columbia if petition for such review is filed by the applicant or holder within ninety days after the decision is rendered."

[5] Carried forward into Sec. 307(a) of the Communications Act of 1934, reprinted in the Appendix to Petitioner's Brief, pp. 58-59.

demand for the same, the Secretary of Commerce shall make an equitable distribution of licenses, bands of frequency or wave lengths, and of power among the different zones established in section 9 of this Act, and shall apply the same principle, as between applicants from the different States and communities within each of said zones.

* * * * *"[1]

All of them, furthermore, follow substantially the same arrangement in the subject-matter of the succeeding provisions, corresponding to the remainder of Section 9, Section 10, the *second* paragraph of Section 11, etc.

The omission in these bills of anything corresponding to the first paragraph of Section 11 was *not* due to an intention to deprive interested parties of an opportunity for a full administrative hearing but rather that other portions of the bill provided for such a hearing.

In the series of House Bills, it will be recalled, the Secretary of Commerce was to be made the permanent licensing authority, and the Commission was to be established with jurisdiction as follows:

"Sec. 8. * * *

* * * * *

"The Secretary of Commerce may refer to the commission any applications for licenses or for the use of wave lengths or for power in connection therewith, or any other matter, the determination of which is vested in him under the terms of this Act. Any person, firm, company, or corporation interested in or aggrieved by any decision of the Secretary of Commerce may appeal therefrom to the commission. The commission shall hear appeals or references by the Secretary of Commerce de novo, and is authorized to adopt general rules and regulations fixing the time and form of appeals and governing the proceedings before it. Any person, firm, company, or corporation interested in or aggrieved by any decision of the commission with re-

[1] Sec. 2(C) of H. R. 9971, 69th Cong., as passed by the House Mar. 15, 1926.

spect to the granting or refusal of a permit or license or the revocation of or the refusal to revoke a license, may appeal therefrom to the Court of Appeals of the District of Columbia. Notice of said appeal shall be given by service upon the secretary of said commission, prior to the filing thereof, of a certified copy of said appeal and the reasons therefor. Procedure upon said appeal shall be the same as in cases of appeal from decisions of the Secretary of Commerce.

* * * * *"[7]

Under the compromise arrived at in conference, the Commission was to be the licensing authority for the first year and thereafter the Secretary of Commerce, with the Commission exercising the appellate or supervisory jurisdiction which the House bill had provided. As a result, in order to bridge the gap and to provide for hearing before the Commission during the first year, it was necessary to insert Section 11. It can hardly be contended that Congress intended to require less in the way of notice and opportunity for hearing for interested parties during the first year than thereafter.

It is more reasonable to assume that Section 11 was intended to afford an opportunity for hearing equivalent to that provided by Section 5 *after* the end of the first year. The relevant provisions of Section 5 of the Radio Act of 1927 were as follows:

"Sec. 5. From and after one year after the first meeting of the commission created by this Act, all the powers and authority vested in the commission under the terms of this Act, except as to the revocation of licenses, shall be vested in and exercised by the Secretary of Commerce; except that thereafter the commission shall have power and jurisdiction to act upon and determine any and all matters brought before it under the terms of this section.

"It shall also be the duty of the Secretary of Commerce—

---

[7] Sec. 8 of H. R. 9971, 69th Cong., as it passed the House Mar. 15, 1926. Similar but less elaborate provisions appeared in Sec. 8 of H. R. 5589 and Sec. 9 of H. R. 9108; also Sec. 15 of S. 1754.

"(A) For and during a period of one year from the first meeting of the commission created by this Act, to immediately refer to the commission all applications for station licenses or for the renewal or modification of existing station licenses.

"(B) From and after one year from the first meeting of the commission created by this Act, to refer to the commission for its action any application for a station license or for the renewal or modification of any existing station license as to the granting of which dispute, controversy, or conflict arises or against the granting of which protest is filed within ten days after the date of filing said application by any party in interest and any application as to which such reference is requested by the applicant at the time of filing said application.

* * * * *

"(F) To report to the commission from time to time any violations of this Act, the rules, regulations, or orders of the commission, or of the terms or conditions of any license.

* * * * *

"(H) * * *

"The Secretary may refer to the commission at any time any matter the determination of which is vested in him by the terms of this Act.

"Any person, firm, company, or corporation, any State or political division thereof aggrieved or whose interests are adversely affected by any decision, determination, or regulation of the Secretary of Commerce may appeal therefrom to the commission by filing with the Secretary of Commerce notice of such appeal within thirty days after such decision or determination or promulgation of such regulation. All papers, documents, and other records pertaining to such application on file with the Secretary shall thereupon be transferred by him to the commission. The commission shall hear such appeal de novo under such rules and regulations as it may determine.

"Decisions by the commission as to matters so appealed and as to all other matters over which it has jurisdiction shall be final, subject to the right of appeal herein given.

* * * * *"

The powers and functions of the Secretary of Commerce were transferred to and vested in the Commission under Act of Congress, June 30, 1932 and an executive order of the President pursuant thereto.[8]

The antecedents of the above-quoted portion of Section 5 of the Radio Act of 1927 have already been sufficiently adverted to under the preceding heading. They reflect a persistent desire in Congress that opportunity for full administrative hearing be accorded not only to applicants but to persons "aggrieved or whose interests are adversely affected."

(b) *Sec. 319 of the Communications Act of 1934.*

Sec. 319 of the Communications Act of 1934, covering construction permits, is a substantial reproduction of Sec. 21 of the Radio Act of 1927. Petitioner's brief directs attention to the fact that this section does not, in terms, require any hearing whereas Sec. 309(a), requiring hearing under certain circumstances, does not mention applications for construction permit. The question is raised as to whether applications for construction permit are to be considered as included within the applications as to which hearing is required by Sec. 319.

The antecedents of Sec. 21 of the Radio Act of 1927 go back to the earlier bills[9] but none of them throws any light on the question.

---

[8] c. 314, Sec. 511, 47 Stat. 417.

[9] The forerunner of the construction permit appears to have been the provision in Senator Poindexter's bill, S. 4038, 66th Cong., introduced Mar. 8, 1920, in which Sec. 5 provided in part:

> "• • • In case of stations not actually under construction or already constructed at the date of the passage of this Act, the license or licenses must be secured before the commencement of the construction of such stations. • •"

Practically all bills thereafter make an express requirement of construction permits issued upon application.

The reason for the omission of any requirement for hearing in Sec. 21 of the Radio Act of 1927, or in any of the bills leading to its enactment, is probably to be found in the circumstances recounted under the previous subheading. The provisions in the House bills which became Sec. 5 of the Act adequately provided for full administrative hearing for all interested parties, including both applicants and persons adversely affected. In drafting the compromise bill, the Conference Committee inserted Sec. 11 but either overlooked the construction permit section (which was located elsewhere in the House bill) or considered that, in view of the provisions of that section, an application for construction permit was in effect an application for license.[10] In view of the fact that Sec. 21 makes the issuance of a license almost automatic once a construction permit has been issued and its terms have been complied with, it and Sec. 11 can hardly be read together intelligibly on any other basis.

---

[10] This was the view taken, in substance, by the United States Court of Appeals in Durham Life Ins. Co. v. Commission, 55 F. (2d) 537 and Pacific Radio Development Co. v. Commission, 55 F. (2d) 540, both decided Dec. 21, 1931.

IV. THE STANDARD "PUBLIC INTEREST, CONVENIENCE OR NECESSITY."

The standard "public interest, convenience or necessity", or its equivalent, appears in the following portions of the Communications Act of 1934:

1) Sec. 309(a),[1] having to do with the disposition of applications for license, for renewal of license, and for modification of license. Except for substitution of "Commission" for "licensing authority", this section is identical with the first paragraph of Sec. 11 of the Radio Act of 1927.

2) Sec. 319,[2] having to do with the disposition of applications for construction permit. This section is similarly identical with Sec. 21 of the Radio Act of 1927.

3) Sec. 307(a),[3] having to do with the granting of station licenses. This section is similarly identical with the first paragraph of Sec. 9 of the Radio Act of 1927.

4) The opening clause of Sec. 303,[4] governing the exercise of the Commission's principal legislative or regulation-making powers. This section is similarly identical with the opening clause of Sec. 4 of the Radio Act of 1927.

5) Sec. 303(f),[5] having to do with making regulations to prevent interference "and to carry out the provisions of the Act." This clause varies from Sec.

---

[1] "that public interest, convenience or necessity would be served".

[2] "if public convenience, interest, or necessity would be served."

[3] "if public convenience, interest, or necessity will be served."

[4] "as public convenience, interest, or necessity requires".

[5] "will promote public convenience or interest or will serve public necessity".

4(f) of the Radio Act of 1927 by substituting "after a public hearing the Commission shall determine that" for "in the judgment of the commission."

6) Sec. 310(b),[6] having to do with the Commission's consent to transfer of licenses. This section represents a substantial modification of the second paragraph of Sec. 12 of the Radio Act of 1927. The earlier statute did not contain any standard. The later statute expands its scope to include transfers of control in licensee corporations, and forbids any transfer "unless the Commission shall, after securing full information, decide that said transfer is in the public interest."

7) Sec. 310(b),[7] governing compulsory modification of license. This section had no counterpart in the Radio Act of 1927.

8) Sec. 325(c),[8] having to do with permits to export programs to be broadcast by foreign stations. This section had no counterpart in the Radio Act of 1927.

It is unnecessary, for present purposes, to trace the legislative history of the standard as used in the above-enumerated sections separately for each section. The standard was introduced in 1934 into Sec. 310(b), although not contained in the corresponding portion of the Radio Act of 1927, for obvious reasons, *i.e.*, to provide a guide for the Commission's determinations on proposed transfers, and to subject a proposed transferee of a license to the same test as is imposed on an applicant for a new station. Secs.

---

[6] "in the public interest".

[7] "will promote public interest, convenience, and necessity".

[8] "shall be subject to the requirements of section 309". The section further makes a permit subject to revocation when the Commission finds "its continuation no longer in the public interest".

310(b) and 325(c), which had no counterpart in the Radio Act of 1927, were, logically enough, endowed with the same standard as had been made applicable to the Commission's other determinations.

The significant field for study is, therefore, the history of the standard as it appeared in Secs. 4, 9, 11 and 21 of the Radio Act of 1927.

1. ORIGIN OF THE STANDARD AS USED IN THE RADIO ACT OF 1927.

As already explained, Sec. 11 of the Radio Act of 1927 originated in the conference report of January 27, 1927 proposing a compromise between H.R. 9971 as it passed the House March 15, 1926 and H.R. 9971 as it passed the Senate July 2, 1926. Our search is, therefore, confined to Secs. 4, 9, and 11 of the Act.

Except for differences in the numbering of sections and location in the bills, these three sections had counterparts in almost all of the bills introduced in either House or Senate in the 69th Congress, and in each instance the same standard appears.[9]

On the other hand, the bill passed by the House on January 31, 1923,[10] while containing sections otherwise corre-

[9] H. R. 5589, introduced Dec. 15, 1925, Secs. 1(B), 2(C) and 7; H. R. 9108, introduced Feb. 9, 1926, Secs. 1(B), 2(C) and 8; H. R. 9971, as passed by the House, Mar. 15, 1926, Secs. 1(B), 2(C) and 7; H. R. 9971 as passed by the Senate July 2, 1926, Secs. 1(C) and 2(C), the construction permit section being omitted; and S. 4057, introduced Apr. 22, 1926, Secs. 1(D), 2(C) and 7. S. 1754: introduced by Senator Dill Dec. 16, 1925, used the same phraseology in Sec. 2 (corresponding to Sec. 4 of the Radio Act of 1927) but in Sec. 6 (corresponding to Sec. 9 of the Radio Act of 1927) provided:

> "The Secretary of Commerce may * * * grant licenses * * * to any applicant who will render a public benefit, is needed by the public interest, or is contributing, or will contribute to the development of the art of radio."

Instead of construction permits, Sec. 12 of S. 1754 provided for preliminary licenses.

[10] H. R. 13773, 67th Cong., Secs. 1(B), 2(C) and 4.

sponding to Secs. 4, 9 and 21 of the Radio Act of 1927, omitted any standard. Similarly, the bill which passed the Senate April 7, 1924,[11] did not have any such provisions and did not make use of the standard.

Use of the standard, or of its forerunners, in radio legislation had, however, a much earlier origin.

The first general bill to regulate radio communication, introduced March 6, 1908 made licenses for operation or use of wireless telegraph apparatus subject to the

> "condition that the said operation or use thereof shall not interfere with any naval or military wireless telegraph station."[12]

Substantially the same bill was again introduced in the next Congress.[13]

Recitations in other bills and resolutions introduced during this same period depict the problem in its early aspects and contain a germ of the standard later to become part of the law:

> "Whereas the unrestricted use of wireless telegraphy and wireless telephony has reached such a state that the transmission of public and private messages, including calls from vessels in distress, have been interfered with *to the detriment of public and private interests;* * * *";[14] (Italics supplied)

> "Whereas the unrestricted use of wireless telegraphy and wireless telephony has reached such a state that official messages involving the saving of life and property are frequently interfered with, *to the jeopardy and detriment of the public interests* * * *;"[15] (Italics supplied)

---

[11] S. 2930, 68th Cong.

[12] Sec. 4 of S. 5949, 60th Cong., introduced by Mr. Hale.

[13] Sec. 4 of S. 7061, 61st Cong., introduced by Mr. Depew, Mar. 10, 1910.

[14] The above is contained in H. R. 19560, 61st Cong., introduced Jan. 27, 1910, and H. R. 22558, 61st Cong., introduced Mar. 8, 1910, both by Mr. Burke.

[15] H. J. Res. 95, introduced Dec. 17, 1909, and H. J. Res. 182, introduced Mar. 29, 1910, both by Mr. Roberts.

The Radio Act of 1912 contained no standard although it is replete with provisions designed to prevent interference with government stations, distress traffic by ship and shore stations, and stations engaged in public correspondence.[16] For example, Sec. 4(15) provided:

> "Fifteenth. No private or commercial station not engaged in the transaction of bona fide commercial business by radio communication or in experimentation in connection with the development and manufacture of radio apparatus for commercial purposes shall use a transmitting wave length exceeding two hundred meters, or a transformer input exceeding one kilowatt, except by special authority of the Secretary of Commerce and Labor contained in the license of the station: * * *."

The next item of interest occurred after the World War, with the introduction of a bill of general regulative scope on March 8, 1920, which provided in part:

> "Section 7. Except in the case of experiments in the development of the art, a license shall not be granted to any station not in actual process of construction or already constructed at the date of the passage of this Act, *if the operation of the proposed station will seriously interfere with the operation of existing Government or licensed stations or is not necessary for the good of the general public service.* * * *"[17] (Italics supplied)

The first of the four National Radio Conferences, which, under the leadership of the Secretary of Commerce, were to play an important role in the shaping of radio legislation, was held at the call of Mr. Hoover from February 27 to March 2, 1922, was attended by Mr. (now Senator) White of Maine, who had already become the principal pro-

---

[16] See particularly the many specific regulations in Sec. 4 of the Act.

[17] S. 4038, 66th Cong., introduced by Mr. Poindexter. He introduced a substantially identical bill, S. 31, in the 67th Cong. on Apr. 12, 1921.

ponent of such legislation in the House. Among the many recommendations adopted by this conference were the following:

> "RESOLVED, That the Conference on Radio Telephony recommend that the radio laws be amended so as to give the Secretary of Commerce adequate legal authority for the effective control of—
>
> "(1) The establishment of all radio transmitting stations except amateur, experimental, and Government stations.
>
> "(2) The operation of nongovernmental radio transmitting stations.
>
> "RESOLVED, That it is the sense of the conference that radio communication is a public utility and as such should be regulated and controlled by the Federal Government *in the public interest.*"[18] (Italics supplied.)

Prior to these recommendations, Mr. White introduced the first of the long series of bills by him, on April 18, 1921, containing the following:

> "Sec. 7. That no license shall be granted to any station, the operation of which will unduly interfere * * *, nor to any station *which is not in the interest of the general public service.*"[19] (Italics supplied.)

On May 6, 1921, he introduced a second bill containing the following:

> "Sec. 2 (b) * * * The Secretary of Commerce may in his discretion upon application therefor issue licenses to other radio receiving stations *when any public purpose will be served thereby.*"[20] (Italics supplied.)

---

[18] Dept. of Commerce Radio Service Bulletin, No. 61, May 1, 1922, p. 23. The words "public interest" are used repeatedly in the other recommendations, including its enumeration of "Considerations to be Followed in Granting Licenses", *Ibid*, pp. 27-28.

[19] H. R. 4132, 67th Cong.

[20] H. R. 5889, 67th Cong.

This is the original of what became the first paragraph of Sec. 9 of the Radio Act of 1927. His next bill, introduced in the same Congress June 9, 1922, changed the phraseology of this provision to read as follows:

> "Section 2C. That the Secretary of Commerce, subject to the limitations of this Act, in his discretion, may grant to any applicant therefor a station license provided for in sections 1 and 2 hereof, except that he may grant such license only to a station *which is in the interest of the general public service.*"[21] (Italics supplied.)

His fourth bill, which as above stated passed the House January 31, 1923, omitted the clause beginning "except that," for reasons which we are unable to state.

Simultaneously a series of parallel bills was introduced in the Senate by Senator Kellogg. The first of these, introduced May 6, 1921, contained the following:

> "Sec. 7. That no license shall be granted to * * * any station which is not in the interest of the general public service."[22]

The second, introduced June 8, 1922, contained a provision identical with that in Mr. White's second bill, above-quoted.[23]

The standard in its present form first appeared in a bill introduced in the Senate on March 10, 1924 by Senator Dill. It contained provisions corresponding to Sec. 4 (opening clause) and Sec. 21 (first paragraph) of the Radio Act of 1927, and used the words "public convenience, interest, or necessity."[24]

---

[21] H. R. 11964, 67th Cong.

[22] S. 1627, 67th Cong.

[23] S. 3694, 67th Cong.

[24] S. 2796, 68th Cong. S. 2930, as reported by the House Committee on Merchant Marine and Fisheries May 13, 1924, contained identical provisions. The committee report stated:

> "Paragraph (B) of section 1 recognizes that radio communication has reached such a stage of development and use

The recommendations adopted by the Fourth National Radio Conference, held November 9 to 11, 1925, and largely relied upon by the sponsors of radio legislation in the 69th Congress, included the following:

"4. * * *

* * * * * *

"(d) That those engaged in radio broadcasting shall not be required to devote their property to public use and their properties are therefore not public utilities in fact or in law; provided, however, that a license or a permit to engage in radio communication shall be issued only to those who in the opinion of the Secretary of Commerce will render a benefit to the public; or are necessary in the public interest; or are contributing to the development of the art.

* * * * *

"(i) No license shall be issued to operate a transmitting station not already operating in radio communication, except mobile or amateur stations, unless prior to the application for such license there shall have been issued by the Secretary of Commerce an erection permit; provided further, that an erection permit to engage in radio communication shall be issued only to those who, in the opinion of the Secretary of Commerce, will render a benefit to the public; or are necessary to the public interest; or are contributing to the development of the art.

* * * * * [25]

---

that the public's interest and rights are involved. It is imperative that indiscriminate and unrestrained transmission shall not be permitted and that licenses shall be issued only in those cases in which some public interest, necessity or convenience is thereby served."

H. Rep. 719, 68th Cong., p. 2.

[25] Reprinted in 67 Cong. Rec. 5479, Mar. 12, 1926.

2. DEBATES AND COMMITTEE REPORTS.

The importance of the subject considered, there is surprisingly little discussion of the meaning of the standard "public interest, convenience or necessity" in the entire series of committee reports and congressional debates in the period 1923-1927. For the most part, recourse must be had to the many statements setting forth the purposes of the statute, made by the managers and principal proponents of the legislation (Senator Dill in the Senate and Mr. White in the House). These, however, are so lengthy and involve so much repetition, both as between themselves and on matters that are common knowledge, that it is impracticable to reprint more than limited excerpts.

(a) *Extract from Remarks of Mr. White, January 31, 1923.*[26]

"*Mr. White of Maine:* * * * This right to operate radio stations, t nsmit these messages, send this energy out in the air, is not an absolute right in the citizen of the United States, to be exercised by him without leave or control by any governmental body. At most it is a qualified right, to be exercised under the rules and conditions Congress lays down. We undertake here to lay down the rules, and we create in this legislation the body to determine the application of those rules to the facts in every case. We do create a court, and that court is the Secretary of Commerce, clothed with plenary powers to consider facts, to pass on the merits, and then to render a decision according to the public interests.

"What is the situation that we are undertaking to correct? I can illustrate it by a specific case. There was a concern over in New York which obtained a license away back in May, 1920. It was found in the operation of that station that it interfered with communications between ships at sea, between ship and shore, and it was complained of by a number of people. It was complained of by the postal authorities, by the naval authorities, by numerous private users, and-

[26] In explanation of H. R. 13773, 67th Cong., 64 Cong. Rec. 2786.

by the press of the country located in New York. Ultimately the question came up to the Secretary as to whether he should revoke that license. For weeks and weeks and month after month that matter had been kept in the air. That station continued to operate in violation of the interests of the public, endangering every day it operated the lives of people at sea on the Atlantic coast. Finally the Secretary of Commerce issued an order revoking that license, and then the holder of that license came into court, petitioned for a mandamus directing the Secretary of Commerce to issue to him a license, and a court finally issued the order of mandamus to the Secretary of Commerce directing him to issue a license to that station, which had flagrantly violated the rights of the Nation and of the people of the Country."

(b) *Extracts from Remarks of Mr. White, March 12, 1926.*[27]

"* * * The Government's task is to regulate and control a situation of such complexity under a statute framed under the conditions and with the knowledge existing in 1912. It has been held by the Court of Appeals of the District of Columbia that it is mandatory upon the Secretary of Commerce under the act of 1912 to issue a license to transmit to every applicant. The problem has been, therefore, how to distribute a limited number of wave lengths among an unlimited number of stations. By various expedients, by division of time, by power limitation, by geographical separation, and by other means of doubtful legal authority the department has sought to solve a difficulty which is inherent in the situation if there is a right in everyone who wishes to transmit to do so.

"The congestion in the broadcasting field—and it is this means of communication in which the public is chiefly interested—minimizes the value of all stations. *There is inequitable geographical distribution of stations, overlapping of areas served, confusion and intolerable interference and bad as the situation now is it threatens to be worse.* There are now on file in the

[27] In explanation of H. R. 9971, 69th Cong., which ultimately became the Radio Act of 1927, 67 Cong. Rec. 5478-80.

department approximately 425 applications. Add those to the 536 now outstanding and we would have a total of 961, or 11 stations for each wave length. Such a result means the complete breakdown of broadcasting service within the United States. This result is inevitable under existing law. It is universally recognized. Its appreciation is responsible for the widespread interest in radio legislation and for the general hope that Congress will confer the powers necessary to avert the impending calamity. (Italics supplied)

* * * * * *

"* * * These powers are hereafter to be exercised under a different principle than has heretofore controlled. We have reached the definite conclusion that the right of all our people to enjoy this means of communication can be preserved only by the repudiation of the idea underlying the 1912 law that anyone who will may transmit and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual to use the ether. This is the first and most fundamental difference between the pending bill and the present law.

"The recent radio conference met this issue squarely. It recognized that in the present state of scientific development there must be a limitation upon the number of broadcasting stations and it recommended that *licenses should be issued only to those stations whose operation would render a benefit to the public, are necessary in public interest, or would contribute to the development of the art.* This principle was approved by every witness before your committee. *We have written it into the bill.* If enacted into law, the broadcasting privilege will not be a right of selfishness. It will rest upon an assurance of public interest to be served. The same rule is asserted with respect to other forms of transmission. (Italics supplied)

"We have sought in other ways to make more certain a proper regard for public as opposed to private right. Under existing law, there is no limitation upon the right of the Secretary to grant licenses for such time as he approves. He might grant a license for 50, a 100 years, or in perpetuity. In the present bill we

definitely challenge and curtail this power. We limit the life of every license to five years but with a right of renewal.

* * * * *

"Existing law gives the Secretary no control over the location of stations. The result has been an unjustifiable grouping of stations within limited areas. There are within 50 miles of Chicago 40 stations, of New York 38, of Philadelphia 22, and of San Francisco 22. Stations so centered detract from the value of each other and interfere with the highest quality of service. In the bill before you the Secretary is given authority in passing upon a license to consider its proposed location and the area to be served thereby, and he is enjoined to effect an equitable geographical distribution of stations over the entire country.

* * * * *

"* * * We have provided checks upon the arbitrary and improper exercise of power by a single man. *In the first instance broad and somewhat unusual authority is vested in the Secretary of Commerce. But this is not power to be exercised at his will. We have laid down the rule of public interest to guide and restrain him in his decisions.* We have in addition set up a commission, bipartisan in character, regional in representation, to which every decision of the Secretary may be appealed and we have provided an appeal to the Court of Appeals of the District from decisions of Secretary or commission in major matters."[28] (Italics supplied)

(c) *Extracts from Remarks of Mr. Dill, June 30, 1926.*[29]

"When broadcasting developed and the Secretary of Commerce found he was without power to regulate it he began calling annual conferences of those interested in radio broadcasting, including broadcasters, manufacturers, and distributors of radio apparatus. The first conference was held in 1922 to consider the prob-

[28] 67 Cong. Rec. 5479-80.

[29] In explanation of H. R. 9971, 69th Cong., as reported by the Senate Comittee on Interstate Commerce.

lems that had already developed in connection with broadcasting. * * *[30]

* * * * *

"In the case of Hoover v. Intercity Radio Co. (286 Fed. 1003) the court declared that under the law the Secretary of Commerce has no discretionary power in the issuance of licenses when application is made. In that case the Secretary of Commerce had refused to renew the license, because he said there was no available wave length that could be used without interfering with existing radio service.

"The Intercity Co. brought an action in court for a writ of mandamus and the court granted the writ. Nevertheless, in the face of this decision the Secretary has refused to grant licenses for the 639 applications now on file in the department. To do so, he declares, would mean chaos in radio broadcasting.

"The only other case of testing the law in court developed a few weeks ago when the Secretary of Commerce refused to grant a license to the Zenith Radio Corporation of Chicago for use of a wave length more than two hours per week. * * *

* * * * *

"There is another feature of the law that makes the need of legislation even more imperative than the conditions I have just described. I refer to the fact that the present law places no limit on the length of time for which the Secretary of Commerce may grant licenses. * * *[31]

* * * * *

"* * * Those stations are in existence largely because they came to the Department of Commerce with their applications, and, when nobody else was making applications, their applications were granted. *As a result there is a great deal of injustice being done in the distribution of radio stations to-day.*

* * * * *

"The Senate committee did not feel that any one man, however good and however wise he might be,

[30] 67 Cong. Rec. 12350.

[31] *Ibid.* 12351.

ought to be entrusted with the discretion of saying who shall and who shall not have a monopoly of the air in a particular community. * * * [32] (Italics supplied)

* * * * *

"* * * He does not and he can not give consideration to these great problems affecting the *economic and social* life of the country, as radio is more and more affecting them, and the committee believes that problems of this kind should be considered not by clerks but by men chosen to study the questions, to consider them from every angle, and then to provide, as the bill provides, fair, efficient, and equitable radio service.[33] (Italics supplied)

* * * * *

"*Senator Cummins:* * * * I wish the Senator would read that part of the bill which governs the commission in determining who shall have the license.

"*Senator Dill:* There are two provisions: One is that they shall grant licenses unless public convenience and interest forbids, and the other is that they shall give fair, efficient, and equitable radio service to each community. Those are the two things which really govern the commission, I should say.

"*Senator Cummins:* I instanced both of them when I said they were controlled only by what they regarded to be the public interest.[34]

* * * * *

"* * * I want to disagree with my good friend from Utah, who said a while ago that this commission should be composed of experts. I do not think so. I think it should be composed of men who have an understanding of the public needs, men of vision and great ability, who will depend upon experts in radio for the necessary technical information, but who will administer this law from the standpoint of the public's interest, and particularly with a view to the future develop-

[32] *Ibid*, 12353.
[33] *Ibid*, 12354.
[34] *Ibid*, 12355.

ment of the radio art for the *social and economic* good of our people. * * *"[35] (Italics supplied)

(d) *Extracts from Remarks of Mr. White, January 29, 1927.*[36]

"* * * This legislation may fall far short of what it should be, but it is at least a step in the right direction. First and foremost, it asserts unequivocally the power and authority of the United States over this means of communication and gives to the Federal Government power over the vital factors of radio communication. It gives to the commission, and thereafter to the Secretary of Commerce, subject to appeal to the commission, the power to issue licenses if the public interest or the public convenience or public necessity will be served thereby.

"This is a new rule asserted for the first time, and it is offered to you as an advance over the present right of the individual to demand a license whether he will render service to the public thereunder or not. It is one of the great advantages which this legislation offers you. The bill gives to the Federal Government the power to determine the wave length which every station shall use. Under the existing conditions licensees use the wave length they want, it matters not the consequences therefrom."[37]

(e) *Extracts from Remarks of Mr. Dill, February 3, 1927.*

"Let us suppose a case of the failure of the commission to follow the terms of the statute. I might illlustrate by that to the Senator what would be a case of an appeal. The bill provides that licenses shall be granted because of pubic convenience, interest, or necessity. If a license is refused, and it could be shown that the granting of that license would serve public interest, convenience, or necessity, I think a court might intervene.

---

[35] *Ibid.* 12358.

[36] In explanation of H. R. 9971, 69th Cong., as it emerged from conference and passed both Houses.

[37] 68 Cong. Rec. 2579.

"The bill provides that licenses shall be distributed so that there shall be equality of service to the different States and communities, and if the commission refused to grant a license, and an applicant could show that a particular community was not receiving equitable service compared with other communities, I think the courts might interpose. Of course, I could not attempt to cover all the cases of appeal, but questions of that kind, I think, might be appealed."[38]

3. LIMITATIONS IMPOSED BY SECTION 326.

Aside from the several specific directions given the Commission by Congress,[39] aside from the mandate to effect "a fair, efficient, and equitable distribution of radio service,"[40] and aside from the provision that a broadcaster shall not be deemed a common carrier,[41] there is only one limitation of a general character imposed on the scope of the standard "public interest, convenience or necessity". This is by Sec. 326, reading as follows:

"Sec. 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."

Except for substituting "Commission" for "licensing authority", the section is identical with Sec. 29 of the Radio Act of 1927. It becomes of interest to determine the extent

---

[38] 68 Cong. Rec. 2869.

[39] E.g., the prohibitions against issuance of licenses to alien interests in Sec. 310(a) or to monopolies in Sec. 311.

[40] Sec. 307(b), as amended June 5, 1936, c. 511, Sec. 2, 49 Stat. 1475.

[41] Sec. 3(h).

to which this section narrows what might otherwise be the scope of the statutory standard.

As was the case with many other provisions in the Radio Act of 1927, this section had its roots in recommendations of the national radio conferences. The Fourth National Radio Conference adopted the following legislative recommendation:

> "(c) That the doctrine of free speech be held inviolate."[42]

The bills introduced in the House in the 69th Congress, including the bill which passed the House March 15, 1926, contained no section corresponding to Sec. 29. Mr. White explained the omission as follows:

> "*Mr. LaGuardia.* The gentleman stated the recommendations, among which was a guaranty of free speech over the radio. What provision does the bill make to carry that out?
>
> "*Mr. White of Maine.* It does not touch that matter specifically. Personally, I felt that we could go no further than the Federal Constitution goes in that respect. The pending bill gives the Secretary no power of interfering with freedom of speech in any degree.
>
> "*Mr. LaGuardia.* It is the belief of the gentleman and the intent of Congress in passing this bill not to give the Secretary any power whatever in that respect in considering a license or the revocation of a license.
>
> "*Mr. White of Maine.* No power at all."[43]

---

[42] 67 Cong. Rec. 5479. It also adopted a resolution

> "that any agency of program censorship other than public opinion is not necessary and would be detrimental to the advancement of the art."

Proc. of Fourth National Radio Conference, Gov. Pr. Off., pp. 10-11. See also

Proc. of Third National Radio Conference, Gov. Pr. Off. p. 13.

[43] 67 Cong. Rec. 5480, March 12, 1926.

Unsuccessful attempts were made to amend the bill so as to forbid defamation by radio and were opposed as being "very near censorship."[44]

The series of bills introduced in the Senate in that Congress, however, contained such a section.[45] The section was inserted in the House bill as reported by the Senate Committee on Interstate Commerce, and read as follows:

> "Sec. 8. Nothing in this Act shall be understood or construed to give the commission the power of censorship over the radio communications or signals transmitted by any radio station *except as herein stated and declared*, and no regulation or condition shall be promulgated or fixed by the commission which shall interfere with the right of free speech by means of radio communication *except as specifically stated and declared in this Act: Provided, That* no person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."[46] (Italics supplied)

The reason for the qualification expressed in the italicized portions in the above was that the bill also contained a section forbidding "libelous or slanderous communication by radio."[47]

On the floor of the Senate Mr. Dill explained the section as follows:

> "* * * The bill does not give to the commission the power to censor programs, but instead there is a provision in the bill which specifically prohibits the commission from censoring programs in any way."[48]

---

[44] 67 Cong. Rec. 5480, 5572-3, 5646.

[45] Sec. 14 of S. 1754 and Sec. 10 of S. 4057 introduced by Senator Dill.

[46] H. R. 9971, as reported May 8, 1926. S. Rep. 772. This report (p. 4) described the above section as follows:

> "The commission shall not be permitted to exercise the power of censorship over radio programs, but no person shall utter any obscene, indecent, or profane language by radio."

[47] *Ibid*, Sec. 7.

[48] 67 Cong. Rec. 12615.

When the bill emerged from conference, the prohibition against defamation had disappeared, and the italicized portions of the above-quoted section had been stricken out. There was criticism of the bill in both Houses because it failed to include any provision to curb "private censorship"[49] and, in the House, because of deletion of the prohibition against defamation.[50]

It seems clear that the Radio Act of 1927 was enacted by Congress with the distinct understanding by those that voted for it that the Act gave the licensing authority no power to censor programs in any way, much less to take any action abridging freedom of speech.

---

[49] 68 Cong. Rec. 2567, 3257. See also 67 Cong. Rec. 5484.

[50] 68 Cong. Rec. 2567.

APPENDIX B.

The Commission's Administrative Construction of the Pertinent Provisions of the Communications Act of 1934.

By "Commission" is meant the Federal Radio Commission from the date of its organization on March 15, 1927, until July, 1934, and thereafter the Federal Communications Commission.

I. THE COMMISSION'S CONSTRUCTION OF SECS. 309 (a) and 319[1] TO REQUIRE OPPORTUNITY FOR HEARING FOR PERSONS ADVERSELY AFFECTED.

(1). On May 26, 1927, the Federal Radio Commission promulgated its first regulations governing hearings on applications, in its General Order No. 12, which in part provided:

> "All persons interested in *the granting or refusal of the application* and the frequency therein applied for, including other licensees authorized to use the frequency requested, licensees upon frequencies where interference is claimed, other applicants for the same frequency, and representatives of the public in general, may appear and will be heard upon any relevant matters. The commission may likewise introduce witnesses or affidavits."[2] (Italics supplied)

These regulations remained in effect until September 1, 1930, when superseded by a revised and more elaborate set of rules adopted June 25, 1930 (see below).

On January 18, 1929, in a written report to the House Committee on Merchant Marine and Fisheries, discussing the need for amendments in the Radio Act of 1927, the Commission's general counsel stated:

---

[1] Including the corresponding portions of Secs. 11 and 21 of the Radio Act of 1927.

[2] First Ann. Rep. of Federal Radio Commission, 1927, p. 15.

"* * * It [Sec. 11] does not provide for or require any notice to interested parties and does not give such parties any standing in hearings before the Commission, although the Commission has regularly recognized such parties and permitted them to participate in its hearings."[3]

On May 15, 1929, the Chairman of the Federal Radio Commission, testifying before the Senate Committee on Interstate Commerce, stated:

"*Commissioner Robinson:* The practice is now different. I have frequently ruled that any man rising in our hearing and asking to be heard, is entitled to be heard because he has an interest, because he is one of the public, and the practice has been largely liberalized in that particular. * * *."[4]

In December, 1929, the Federal Radio Commission itself described its hearing procedure as follows:

"* * * Other licensees or applicants who have an interest in the matter or who would be adversely affected by the granting of the application are notified and given an opportunity to be heard and oppose the action. * * *"[5]

Contemporary descriptions of the Commission's practice are to the same effect:

"* * * Other licensees or applicants, who by reason of threatened interference or otherwise have an interest in the matter, are notified and given an opportunity to be heard."* (footnote) The Commission has, in practice, not only usually given notice to parties shown by its records to be interested but has given general notice to the public of pending applications through its Press Bureau. * * *."[6]

---

[3] United States Daily, Jan. 18, 1929.

[4] Hearings on S. 6, 71st Cong., before the Senate Committee on Interstate Commerce, p. 173.

[5] Third Ann. Rep. of Federal Radio Commission to Congress, 1929, p. 54.

[6] Report of Standing Committee on Radio Law, 1929, 54 A. B. A. Rep. 455.

"* * * Notice is sent of the nature of the application and of the time and place set for hearing, to other persons which the Commission considers interested. Who are interested parties is discussed below. Some measure of notice is also given the public through public announcement through the Commission's Press Bureau. There is no certain means whereby an applicant can ascertain prior to hearing what persons, if any, will appear to oppose the application. * * *

* * * * *

"There is an increasing tendency to recognize interests of an economic character. For example, in a town which is able to support only two stations with advertising or sponsored programs, each of the two existing stations is considered to have a legitimate interest in opposing the establishment of a new station.

* * * * *

"The Act gives no status to States or other political subdivisions, or to Governmental Departments, or to the representatives of foreign nations or stations, with respect to applications and hearings before the Commission, although all of them will from time to time be vitally interested. The Commission has, however, pursued a very liberal policy in this regard and permits intervention in its hearings of virtually anyone having a legitimate interest (and, occasionally, of persons who have not)."[7]

On March 1, 1929, the Commission's law department submitted to the Commission a draft compilation[8] of proposed rules and regulations, incorporating rules of practice and procedure, including the following:

"Sec. 3. *Applications Granted without Hearing.* The Commission will grant an application in whole or in part without hearing if in addition to its not falling within any of the cases covered by Sections 1 and 2 of this sub-title, it appears conclusively to the Commis-

[7] Caldwell, Practice and Procedure before the Federal Radio Commission, 1 Jour. Air Law, 169, 180, Apr. 1930.

[8] Available only in mimeographed form.

sion from the face of such application, from documents submitted therewith, and from such other information as the Commission may have

"(a) That the granting of such application, either in whole or in part, will serve public interest, convenience, or necessity, and

"(b) That the granting of such application, either in whole or in part, will not aggrieve or adversely affect the interests of any person, firm, company or corporation holding a permit, license or other instrument of authorization from the Commission or having an application therefor pending before the Commission.

* * * * *

"Sec. 4. *Determination of Interest.* The determination of what persons, if any, have interests which would be adversely affected by the granting of any application, shall rest primarily on the question of interference, including heterodyne, cross-talk, blanketing, and harmonics, and the Secretary, in mailing such determination shall be guided largely by the advice of the Chief Engineer of the Commission. Persons may also be considered to have such interests, however, who have an established radio communication service in the same region or between the same or part of the same points and with whom the applicant would come into competition if the application should be granted. In such a case, where the issue is raised as to whether there is need or adequate support for the proposed additional service and whether such service would cause undue hardship to existing services, such persons shall be notified and permitted to be heard with respect to the application. The foregoing shall not be construed to prevent the Commission from considering other persons as proper parties.

"Sec. 5. *Intervention.* Any person, firm, company, or corporation and any State or political division thereof, may, at any time more than two days prior to the date of hearing, file with the Commission a petition to intervene either in support of or in opposition to any application designated for hearing. If such pe-

tition discloses that the petitioner has a substantial interest in the granting or denying of the application, the Commission will grant the petition and permit the petitioner to be heard at such hearing."

This draft underwent study and several successive revisions, to become the basis of the formal rules and regulations described below.

(2) On June 25, 1930, by its General Order No. 93, the Federal Radio Commission adopted its first formal set of rules governing practice and procedure, effective September 1, 1930.[9] These rules included the following:

"**Subtitle B.—Action on Applications.**

"Sec. 5. *Applications granted without hearing.* The commission will grant an application in whole or in part without hearing on the merits if it does not fall within any of the cases covered by sections 1 and 3 of this subtitle, or if it has been determined to be proper after a hearing pursuant to section 4 and in addition thereto it appears conclusively to the commission from the face of such application, from documents submitted therewith and from such other information as the commision may have—

"(a) That the granting of such application either in whole or in part would serve public interest, convenience and necessity, and

"(b) That the granting of such application either in whole or in part would not aggrieve or adversely affect the interest of any person, firm, company, or corporation holding a permit, license or other instrument of authorization from the commission, or having an application therefor pending before the commission.

* * * * *

"Sec. 7. *All other applications designated for hearing.* In cases where the application is or has, pursuant to section 4 hereof, been determined to be proper

[9] Fourth Ann. Rep. of Federal Radio Commission to Congress, pp. 25-33; also published in pamphlet form, Practice and Procedure before the Federal Radio Commission, Gov. Pr. Off., 1930.

upon its face but the commission is unable to determine without a hearing on the merits;

"(a) That the granting of such application either in whole or in part would serve public interest, convenience, or necessity;

"(b) That the granting of such application either in whole or in part would not aggrieve or adversely affect the interest of any person, firm, company, or corporation holding a permit, license, or other instrument of authorization from the commission, or having an application therefor pending before the commission,

the commission will designate the same for hearing and the following procedure will govern:

* * * * *"

"Subtitle D.—Formal Hearings and the Conduct Thereof.

"Section 1. *Parties to hearings.* All persons who are permitted to be heard in support of any application made by them shall be referred to as 'applicants.' All persons who are permitted to be heard in opposition to any application or licensees against whom revocation proceedings are instituted shall be referred to as 'respondents.' All persons, firms, companies, or corporations holding permits, licenses, or other instruments of authorization from the commission, or who have applications pending before the commission who would be aggrieved, or whose interests would be adversely affected by the granting of any application designated for hearing, shall constitute proper parties respondent and shall be notified of any such hearing.

* * * * * *

"Sec. 3. *Intervention.* Any governmental department or officer, any person, firm, company, or corporation, or any State or political subdivision thereof may, at any time, more than 10 days prior to the date of any hearing, file with the commission a petition to intervene therein in support of or in opposition to any application designated for hearing. If the petition discloses a substantial interest in the subject matter of the hear-

ing the commission will grant the same and permit the petitioner to be heard at such hearing subject to regulations hereinafter imposed."

With respect to this compilation the Commission had the following to say:

"While the commission has at various times since its organization enacted and promulgated various rules and regulations governing practice and procedure and attempts at codification have been made, it was not successful in achieving this result until June 25, 1930. The causes for this delay have been chiefly two in number. In the first place, the commission itself was not established in its present form upon a permanent basis until December 18, 1929, it being orginally intended that it should act after a time as a purely appellant body. In the second place, there has been no precedent or analogy upon which to draw and the very nature of the commission's duties under the act made any such rules and regulations almost impossible of speedy enactment.

"It is respectfully submitted that no board or commission under either Federal or State law passes on problems which directly affect such a large part of the entire public and that in no other field of litigation are the parties to the proceedings drawn from such widely separated geographical districts. It is not uncommon in the case of a hearing involving the designation of one of the regional or local channels to have residents of the Pacific and Atlantic coastal areas interested as parties as well as others who reside at intermediate points. Obviously any system of orderly procedure tends to work a hardship on the parties in certain cases, and in the case of the minor operator the cost of personally attending hearings every time that his interests might be affected is virtually prohibitive. On the other hand, orderly administration without orderly procedure is an impossibility. It was with this in mind that the commission adopted General Order No. 93 providing for a comprehensive set of rules and regulations governing practice and procedure before it. A sufficient number of copies have been printed to supply all persons having a legitimate interest therein,

and these are available by request directed to the secretary of the commission. Copies have been mailed to all station licensees and others who are interested in cases set for hearing."[10]

In the following year the Commission stated the following:

"Statements of Fact and Grounds For Decision.

"Section 16 of the radio act of 1927, as amended, requires the Federal Radio Commission, in all appeals from its decisions, to file with the Court of Appeals of the District of Columbia a 'copy of its decision • • • and a full statement in writing of the facts and the grounds for its decision as found and given by it.' In line with this provision the commission, in February, 1931, decided to issue a decision or a statement in writing of the facts and the grounds for its decision in all cases where the decision is adverse to a party of record in the case, or in all cases which may be appealed under the provisions of section 16 of the act. Very little precedent has been established in the field of radio law, either through pronouncements of the courts or of the commission. The issuance of opinions by the commission has served two distinct purposes—first, to apprise the parties and the courts of the position taken by the commission as well as the reasons therefor; and, second, to make known certain definite elements essential in reaching a determination on the standard of public interest, convenience, and necessity.

"It would seem necessary that a litigant be advised as to the position of the commission in order that he may fully protect his interests upon appeal. It is also important that there exist certain well-defined principles which the radio profession may reasonably expect the commission to consider in arriving at a decision upon any application. If these purposes are served, the commission will better be able to carry out the duties imposed upon it by the Congress in the radio act of 1927."[11]

---

[10] Fourth Ann. Rep. of the Federal Radio Commission to Congress, 1930, p. 54.

[11] Fifth Ann. Rep. of the Federal Radio Commission, 1931, pp. 9-10.

The working of the new rules was contemporaneously described in part as follows:

"* * * As a result of the new regulations there has been a marked improvement in the machinery of handling hearings, particularly with reference to the setting up of more clearly defined issues and more adequate notice to interested parties. In only a few cases has the Commission attempted to take action on controversial matters without notice and opportunity for hearing to the interested parties and the tendency is now to set every application for hearing unless it clearly appears that it is non-controversial or that all interested parties have consented to its being granted.

* * * * *

"Contemporaneously with, and pursuant to, the new rules and regulations, was established an examiner system for the holding of hearings. The Examiners' Division of the Commission now consists of a chief examiner and three examiners who, with the exception of only two or three matters, have conducted all the hearings held during the past year.

* * * * *

"In a large proportion of the cases on which examiners' reports were submitted, the Commission rendered decisions which were pursuant to the recommendations of the examiners, although in a substantial number the examiners' recommendations were reversed. For the first several months, the Commission did not write or adopt separate decisions of its own and confined itself to either adopting or rejecting the reports of the examiners, with the result that in the former alternative the examiner's report constituted the decision of the Commission, and in the latter there was no written decision at all giving reasons for the action. During the past few months the practice has changed to the other extreme so that now the Commission (through its Legal Division) prepares and adopts separate findings of its own in almost all cases. * * *"[12]

---

[12] Report of Standing Committee on Communications, 1931, 56 A. B. A. Rep. 369-70.

(3) On November 7, 1931, the Federal Radio Commission adopted a comprehensive set of rules and regulations, including a revision of its rules on practice and procedure, effective February 1, 1932.[18] These new rules of practice and procedure superseded the rules which had been in effect since September 1, 1930. Pertinent excerpts from the revision are as follows:

> "44. Any application which is properly filed and conforms to the regulations of the Commission with respect to the form used, manner of execution, completeness of answers to questions, and other information required, may be granted by the Commission without a hearing if it appears conclusive to the Commission from the face of such application, from documents submitted therewith, and from such other information as the Commission may have (a) that the granting of such application, either in whole or in part, would serve public interest, convenience, and necessity, and (b) that the granting of such application, either in whole or in part, would not aggrieve or adversely affect the interest of any person, firm, company, or corporation holding a permit, license, or other instrument of authorization from the Commission, or having an application therefor pending before the Commission, *Provided, however*, That any such grant shall be conditional and may be suspended and reconsidered by the Commission as hereinafter provided.
>
> "45. In any case where an application is granted in whole or in part without a hearing as provided in paragraph 44, any person, firm, or corporation aggrieved or whose interests are adversely affected by such grant, may obtain a hearing upon said application by adhering to the following procedure:
>
> "a. Such parties shall, within 20 days from the date on which public announcement of such grant is made at the principal office of the Commission, or from its

[18] Sixth Ann. Rep. of the Federal Radio Commission, 1932, pp. 15-17. This set of rules was published in a loose-leaf handbook, comprising 143 printed pages, Gov. Pr. Off., 1932. See Caldwell, New Rules and Regulations of the Federal Radio Commission, 2 Jour. Radio Law 66

effective date if a later date is specified by the Commission file with the Commission and serve upon or mail to the applicant a protest in writing directed to the action of the Commission making such grant.

"b. Such protest shall be executed and sworn to by a person having knowledge of the facts therein stated and shall contain:

"(1) A statement of protestant's interest in the matter.

"(2) A terse, yet complete statement of the facts which protestant expects to prove upon hearing, and

"(3) Proof of service upon the applicant.

"c. Upon receipt by the Commission of such protest the application involved will be set for hearing in the same manner in which other applications are set for hearing and the applicant and other parties in interest notified thereof: *Provided, however*, That upon such hearing the verified protest shall be taken as a pleading limiting the issues to be tried, but not as evidence of the facts therein stated.

* * * * *

"48. In cases where the application is proper upon its face but the Commission is unable to determine, without a hearing on the merits, that the granting of such application either in whole or in part would serve public interest, convenience, or necessity, and that the granting of such application either in whole or in part would not aggrieve or adversely affect the interest of any person, firm, company, or corporation holding a permit, license, or other instrument of authorization from the Commission, or having an application therefor pending before the Commission, the Commission will designate the same for hearing and the following procedure will govern: * * *

* * * * *

"57. All persons who are permitted to be heard in support of any application made by them shall be referred to as 'applicants.' All persons who are permitted to be heard in opposition to any application or licensees against whom revocation proceedings are in-

stituted shall be referred to as 'respondents.' All persons, firms, companies, or corporations holding permits, licenses, or other instruments of authorization from the Commission, or who have applications pending before the Commission who would be aggrieved, or whose interests would be adversely affected by the granting of any application designated for hearing, shall constitute proper parties respondent and shall be notified of any such hearing.

* * * * * *

"59. Any governmental department or officer, any person, firm, company, or corporation, or any State or political subdivision thereof may, at any time, more than 10 days prior to the date of any hearing, file with the Commission a petition to intervene therein in support of or in opposition to any application designated for hearing. If the petition discloses a substantial interest in the subject matter of the hearing the Commission will grant the same and permit the petitioner to be heard at such hearing subject to regulations hereinafter imposed."

The principal change was introduced by Rules 44 and 45, having to do with protests. In this connection the Commission had the following to say:

"Another material change in the rules concerns the action of the commission which may be taken upon applications without a formal hearing. In this connection, rule 44 provides that any application properly filed and conforming to the regulations of the commission may be granted without a hearing if, upon the face of the application and such information as the commission may have before it, the commission is of the opinion that public interest, convenience, and necessity would be served thereby. Such a grant, however, is expressly made conditional and subject to the provisions of rule 45 which permits any person aggrieved or whose interests are adversely affected by such grant to file a formal protest within 20 days from the date of the original grant. Such protest is required to conform to certain formalities with respect to the execution thereof and to set out the interest of the

protestant and to make certain allegations of fact in support of the protest. Upon receipt of the protest, the authority granted becomes automatically suspended unless otherwise ordered by the commission, and the application is designated for hearing upon the issues contained in the protest. Although this provision has been in force for a relatively short time, it has been found that such procedure facilitates the work of the commission and at the same time affords all parties in interest opportunity to object and obtain the benefit of a formal hearing before the commission if they so desire.'"[14]

The practice under these rules was contemporaneously described in part as follows:

"Space will not permit a summary either of the new regulations or of the changes introduced by them in the scheme of regulation previously in force. One of the more noteworthy is a set of provisions, which while retaining the power of the Commission to grant applications without hearing, gives parties who are adversely affected by such an action the right to obtain a hearing on protest filed within 20 days, the Commission's action to be inoperative until after decision resulting from the hearing. In actual practice the new rules on this subject have worked out satisfactorily, and have tended to eliminate the unjust situations which so frequently arose under the Commission's earlier procedure and which resulted in a long series of nullifications of its actions by the Court of Appeals. As has been pointed out in another connection, it is still uncertain whether a person adversely affected in a purely economic sense has any standing to make an effective protest or to participate in a hearing as a party respondent and, while the Commission has tended on the whole to be liberal in recognizing the rights of such persons, it has not been consistent in all cases."[15]

[14] Sixth Ann. Rep. of the Federal Radio Commission to Congress, 1932, p. 16.

[15] Report of Standing Committee on Communications, 1932, 57 A. B. A. Rep. 448-9

These rules continued in force throughout the remainder of the life of the Federal Radio Commission.

(4) The Communications Act of 1934, approved June 19, 1934, continued in effect the Commission's Rules of Practice and Procedure.

Section 604(a) provides as follows:

> "Sec. 604. (a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this Act or in the exercise of duties, powers, or functions transferred to the Commission by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law."

Thus, by legislative enactment the Rules of Practice and Procedure adopted February 1, 1932 by the Federal Radio Commission became applicable to proceedings before the Federal Communications Commission, which was organized July 11, 1934 (see Rules 44, 45, 48, 57 and 59 supra).

(5) On December 18, 1935, the Federal Communications Commission adopted a further revision of the rules governing practice and procedure.[16] These rules remained in effect, without material change, until January 1, 1939, and were in effect at all times during the period when the instant proceedings were pending before the Commission. The pertinent provisions were as follows:

> "104.6. In cases where the application is proper upon its face but the Commission is unable to determine, without a hearing on the merits, that the granting of such application, either in whole or in part, would serve public interest, convenience, or necessity,

[16] Federal Communications Commission, Practice and Procedure, Gov. Pr. Off., 1936.

and that the granting of such application, either in whole or in part, would not aggrieve or adversely affect the interests of any licensee, or any person having a pending application, the Commission will designate the same for hearing and the following procedure will govern: * * *"

"104.4. When upon application any instrument of authorization is granted by the Commission without a hearing pursuant to section 309(a) of the Act, such grant shall remain conditional for a period of not less than 30 days from the date on which public announcement thereof is made, or from its effective date, if a later date is specified, during which 30 days any person aggrieved or whose interests may be adversely affected may obtain a hearing upon such an application by filing a protest as set forth in rule 105.21(b).

"Upon the filing of such a protest, the application involved will be set for hearing in the same manner in which other applications are set for hearing, and the applicant and other interested parties notified. * * * "

"105.21(b). Protests to any application granted by the Commission without a hearing under section 309(a) of title III of the Act (see rule 104.4) shall be subscribed and verified by the protestant and shall contain:

"1. A statement of protestant's interest in the matter;

"2. A terse yet complete statement of facts which protestant expects to prove upon the hearing, and,

"3. Proof of service upon the applicant."

"102.6. The term 'intervener' means a party who upon petition has been permitted to become a party to any proceeding before the Commission."

"102.7(c) A party who is aggrieved or whose interests are adversely affected by any decision of the Commission granting without a hearing any application for an instrument of authorization under section 309(a) of the Act." (defining protestant)

"102.8(b) Any licensee or pending applicant for any instrument of authorization who would be aggrieved, or whose interests would be adversely affected by the granting of any application designated for hearing; or a licensee against whom the Commission has instituted revocation proceedings." (defining respondent)

"105.20 Any party may, at any time, more than 10 days prior to the date of any hearing, file with the Commission a petition to intervene. If the petition discloses a substantial interest in the subject matter of the hearing, the Commission may grant the same and permit the petitioner to be heard at such hearing."

(6) On November 28, 1938, the Federal Communications Commission adopted a further revision of its rules governing practice and procedure,[17] effective January 1, 1939. The following provisions are pertinent:

"Sec. 3.08(b) *Respondent.* The term 'respondent' means: Any licensee, applicant for any certificate, certification, or instrument of authorization, or other person who may be aggrieved or whose interest may be adversely affected by the granting of any application designated for hearing, and who is named in the Commission's notice of designation for hearing, or a licensee or holder of an instrument of authorization or certification which the Commission is empowered to grant, and against whom the Commission has instituted revocation, suspension, modification or cancellation proceedings."

"Sec. 6.02 *Intervention.* Petitions for intervention shall disclose a substantial interest in the subject matter of the hearing or investigation and must be subscribed and verified by the petitioner, in accordance with Section 3.02. Any person may, at any time more than ten days before the date scheduled for hearing, file with the Commission a petition to intervene."

"Sec. 14.04 *Petitions; contents.* Any party whose interests are aggrieved or adversely affected by any

[17] Available only in mimeographed form.

decision, order or requirement of the Commission may file a petition for rehearing of the same or any matter determined therein as provided in Section 405 of the Act. Such petition for rehearing may request (1) reconsideration, either in cases decided after hearing or in cases of applications granted without hearing under Title III of the Act; * * *."

"Sec. 15.31 *Designation for hearing.* In cases where the application is proper upon its face but the Commission is unable to determine, without a hearing on the merits, that the granting of such application, either in whole or in part, would serve public interest, convenience, or necessity, and that the granting of such application, either in whole or in part, would not aggrieve, or adversely affect the interest of any licensee, or any person having a pending application, the Commission will designate the same for hearing and the following procedure will govern: * * *"

(7) On July 12, 1939, the Federal Communications Commission adopted a further revision of its rules governing practice and procedure,[15] effective August 1, 1939. The following provisions are pertinent:

"§1.54. *Intervener.* The term 'intervener' means a party who, upon petition, has been permitted to become a party to any proceeding before the Commission.

* * * * *

§1.58. *Respondent.* The term 'respondent' means a party against whom the Commission has, on its own motion, instituted an inquiry, investigation, revocation, suspension, modification, cancellation, or other proceeding.

* * * * *

"§1.102. *Intervention.* Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed or verified in accordance with Sec. 1.122. The granting of a petition to intervene

[15] Federal Register, July 19, 1939, pp. 3341 et seq.

shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

* * * * * *

"§1.271. *Petitions; contents.* Any party whose interests are aggrieved or adversely affected by any decision, order or requirement of the Commission may file a petition for rehearing of the same or any matter determined therein as provided in Section 405 of the Act. Such petition for rehearing may request (1) reconsideration, either in cases decided after hearing or in cases of applications granted without hearing under Title III of the Act; (2) reargument; (3) reopening of the proceeding; (4) amendment of any finding, or (5) other relief. Such petition shall be specific as to the form of relief sought and, subject to this requirement, may contain alternative requests. Each such petition shall state with particularity in what respect the decision, order or requirement or any matter determined therein is claimed to be unjust, unwarranted or erroneous, and with respect to any finding of fact must specify the pages of record relied on. Where the existence of newly discovered evidence is claimed, the petition must be accompanied by a verified statement of the facts, together with the facts relied on to show that the petitioner with due diligence could not have known or discovered such facts at the time of the hearing.

* * * * *

"§1.382. *Designation for hearing.* In cases where an application for radio facilities is proper upon its face but the Commission is unable to determine upon examination of the same that the granting of such application, either in whole or in part, would serve public interest, convenience or necessity, the Commission will designate the same for hearing and the following procedure will govern it:

* * * * * *

In its most recent report to Congress,[19] the Commission stated:

> "Under its former rules the Commission permitted any party to intervene if his petition disclosed a 'substantial interest in the subject matter.' Furthermore the Commission designated as parties to its hearings those persons shown by its records to have some potential interest, whether or not such persons were known to have an intention to appear. The effects of comparatively unrestricted intervention and of automatic inclusion of parties to the proceeding were the unnecessary prolongation of discussion of noncontroversial issues and the unnecessary multiplication of evidence on relevant issues, due to the cross-examination to which witnesses were subjected by the various parties. The Commission's rules now require all parties who desire to appear in opposition to an application to file petitions to intervene, by means of which their interests may be tested, and parties are required to make a showing that the requested intervention will be in the public interest. At the same time, the Commission has made specific provision for the filing and consideration of motions for enlargement of the issues, a further safeguard for the protection of interests of applicants and other parties."[20]

(8) It is impracticable to enumerate the many hundreds of cases from 1927 to August 1, 1939, in which the Federal Radio Commission and its successor, the Federal Communications Commission, have recognized and given effect to the rules in force until August 1, 1939 by affording opportunity for hearing to persons aggrieved or whose interests would be adversely affected by the granting of an application.

---

[19] Fifth Ann. Rep. of Federal Communications Commission, Nov. 15, 1939, for fiscal year ended June 30, 1939, p. 10. Obviously the above-quoted excerpt is intended to refer to the rules of practice in effect *since* August 1, 1939.

[20] See also discussion of Payne, Commissioner, in re Application of Hazelwood, Inc., Docket No. 5698, Oct. 2, 1939.

II. THE COMMISSION'S CONSTRUCTION OF "PERSONS ADVERSELY AFFECTED" TO INCLUDE LICENSEES AND OTHER APPLICANTS WHO WILL SUFFER ECONOMIC INJURY.

This heading necessarily partakes of both the preceding and the following headings, and need not be separately elaborated.

Not with complete consistency, but nevertheless as a general rule, the Federal Radio Commission and its successor the Federal Communications Commission have recognized that licensees of existing stations will be adversely affected by the establishment of a new station in the same community, and that such licensees have the right, therefore, to opportunity for hearing and otherwise to participate in the proceedings in opposition to granting the application for a new station. This right has been recognized in the early days of the Federal Radio Commission simply by permitting the licensee to appear and participate in the hearing, and later either by automatically making such a licensee a respondent by naming him in the notice of hearing or by permitting him to intervene on petition. This construction of Secs. 309(a) and 319 continued at least until August 1, 1939. The same construction was applied to *other* applicants for new stations or for increased facilities for existing stations in the same community, who would either suffer economic injury by the granting of the application in question or would face increased difficulty or probability of denial of their own applications on economic grounds should the application in question be granted.

It would be impracticable, if not impossible, to assemble the many instances where the foregoing construction has been given practical effect. Some idea of their number may be gathered from the next heading.

III. THE COMMISSION'S CONSTRUCTION OF THE STANDARD OF "PUBLIC INTEREST, CONVENIENCE OR NECESSITY" TO AUTHORIZE OR REQUIRE IT TO TAKE NATURE AND EXTENT OF ECONOMIC INJURY INTO ACCOUNT.

This heading necessarily has five sub-headings, corresponding to the several sections of Title III of the Communications Act in which the standard "public interest, convenience or necessity," or its equivalent, is prescribed for the Commission's guidance.

1. *Actions on Applications Under Secs. 307(a), 309(a) and 319.*[1]

(a) Except, perhaps, for the first year or so of its existence, the Federal Radio Commission (although not with entire consistency) interpreted the standard of public interest, convenience or necessity as authorizing or requiring it to take into account the nature and extent of economic injury which would be caused to the licensees of existing stations and to other applicants, in determining whether to grant or deny applications for construction permits, licenses, and modifications of license.

(b) An early decision, rendered January 31, 1929 on the application of Richmond Development Corporation,[2] contained the following findings of fact:

> "The evidence disclosed that Roanoke is now served by a broadcasting station (Station WDBJ) and that this station is rendering good service to the community; that in Roanoke the available talent for rendering

[1] Corresponding to Secs. 9, 11 (first paragraph) and 21 of the Radio Act of 1927. Separate consideration is not given to Sec. 312(b) since, while it also specifies the standard "public interest, convenience or necessity," it was not contained in the Radio Act of 1927, has not been applied to any appreciable extent, and is not likely to present situations of interest to this discussion.

[2] Docket 246. See Richmond Development Corp. v. Federal Radio Commission, 35 F. (2d) 883.

programs is limited; that the demand for advertising and the revenue which would be derived therefrom by broadcasting stations in Roanoke is limited; that Roanoke and vicinity are receiving the programs of the two national broadcasting chains from stations in Virginia and from many stations located elsewhere * * *.

* * * * * *

"Roanoke has one broadcasting station which is rendering good service to the public. To allow the construction and operation of a second station there would, because of the limited number of frequencies or channels available for broadcasting, preclude some other community of equal, or probably superior, importance from receiving its just and equitable right to a broadcasting station. We are of the opinion that the Commission should not permit the construction and operation of a second station in a city within a state if to do so would prevent another city or community of equal importance within that state from having and enjoying the benefits of a broadcasting station, especially when applications have been received from such communities that are without broadcasting facilities, as is true with Virginia."

(c) In another case, the Commission, on May 31, 1932, designated for hearing the application of Red Oak Radio Corporation, at Red Oak, Iowa, to move to Omaha, Nebraska, because of protests by three licensees of stations at Omaha, all based upon apprehended economic injury.[3] A hearing was held, as the result of which the Commission rendered a decision September 13, 1932, with the following findings:

"Although the general contention of respondents is that the addition of the station to the Omaha area might act to further limit their revenues and necessitate a reduction in the quality and amount of local sustaining programs broadcast by them, it does not appear that the operation of KICK near Omaha would to any ap-

[3] Docket 1678, May 31, 1932. See Woodmen of the World Life Insurance Association v. Federal Radio Commission, 57 F. (2d) 420.

preciable extent curtail the advertising business of respondents or that there is not sufficient business in that area to care for the advertising needs of both the respondent and applicant stations.

* * * * *

"4. It does not appear from this record that the operation of KICK at Carter Lake would so affect the interests and advertising revenues of any of the respondent stations as would necessitate any curtailment of either the quality or quantity of the service now rendered by them to the listening public."

(d) A list of cases in which the same or an analogous interpretation of the standard was recognized by the Federal Radio Commission is as follows:

In re Application of Great Lakes Broadcasting Company, et al, Docket Nos. 310, 312, 316, Decided December 17, 1928.

In re Intercity Radio Telegraph Company, et al, Docket Nos. 186, 453, Decided June 7, 1929.

In re Application of Jenny Wren Company, Lawrence, Kansas, Docket No. 1044, Decided October 16, 1931.

In re Application of A. B. Murray and T. P. Singletary, Baton Rouge, Louisiana, Docket No. 1069, Decided November 20, 1931.

In re Application of Hale Bros. Stores, Inc. & The Chronicle Publishing Company, National Broadcasting Company, Inc., San Francisco, California, Docket No. 1615, Decided June 10, 1932.

In re Application of WJSV, Incorporated and Old Dominion Broadcasting Company, Mt. Vernon Hills, Virginia, Docket No. 1656, Decided June 10, 1932.

In re Application of Iowa Broadcasting Company, Clarinda, Iowa, Docket No. 1649, Decided September 30, 1932.

In re Application of Sanders Brothers Radio Station, Joliet, Illinois, Docket No. 1693, Decided October 21, 1932.

In re Application of James M. Caldwell, Goodland, Kansas, Docket No. 1716, Decided December 16, 1932.

In re Applications of WBBM Broadcasting Corp. and KFAB Broadcasting Company, Docket Nos. 1668, 1669, 1670, 1671, Decided March 24, 1933.

In re Application of Midland Broadcasting Company, Kansas City, Missouri, Docket No. 1809, Decided June 16, 1933.

In re Application of F. J. Reynolds, Inc., Jacksonville, Florida, Docket No. 2181, Decided December 9, 1933.

In re Application of Peoria Broadcasting Company, Peoria, Illinois, Docket No. 1951, *Illinois Broadcasting Company*, Quincy, Illinois, Docket Nos. 2012 and 1918, Decided January 16, 1934.

In re Application of Leo J. Omelian, Erie, Pennsylvania, Docket No. 2046, Decided February 20, 1934.

In re Application of Frank P. Jackson, Docket Nos. 2149, 2207 and 2253, Decided June 22, 1934.

In re Application of Los Angeles Broadcasting Co., Inc., Los Angeles, California, Docket No. 2047, Decided June 1, 1934.

In re Application of WJJD, Incorporated, Chicago, Illinois, Docket No. 2314, Decided June 29, 1934.

(e) The Federal Communications Commission's interpretation of the standard has been, with few exceptions, the same as that of the Federal Radio Commission until recently, about October 2, 1939.

(f) The issue of economic injury to existing stations was considered by the Commission in its determinations as to whether public interest, convenience, or necessity would be served by granting or denying an application, in the following cases:

In re Applications of Red Oak Radio Corp. (*KICK*), Carter Lake, Iowa, and *The Palmer School of Chiropractic* (*KICK*), Davenport, Iowa, 1 F. C. C. 163, 164, 165.

In re Application of Red River Broadcasting Co., Inc. (*KGFK*), Moorhead, Minnesota, 1 F. C. C. 215, 216.

In re Application of Wichita Falls Broadcasting Co. (*KGKO*), Wichita Falls, Texas, 3 F. C. C. 386, 393.

In re Application of Dorrance D. Roderick, El Paso, Texas, 3 F. C. C. 616, 622.

In re Application of Gulf Coast Broadcasting Co., Corpus Christi, Texas, 4 F. C. C. 103, 106.

In re Application of Beaumont Broadcasting Association, Beaumont, Texas, 5 F. C. C. 139, 142.

In re Application of Genesee Radio Corp., Flint, Michigan, 5 F. C. C. 183, 186.
In re Application of Fall River Herald News Publishing Company, Fall River, Massachusetts, 5 F. C. C. 377, 382.
In re Application of The Northern Corporation (WMEX), Boston, Massachusetts, 5 F. C. C. 468, 471-472.
In re Application of R. R. Jackman, et al. (WREN), Lawrence, Kansas, 5 F. C. C. 496, 500.
In re Application of The Louisville Times Company, Louisville, Kentucky, 5 F. C. C. 554, 559.
In re Application of Dorrance D. Roderick, El Paso, Texas, 5 F. C. C. 563, 569.
In re Application of John S. Allen and G. W. Covington, Jr., Montgomery, Alabama, 5 F. C. C. 631, 635-636.
In re Application of KQV Broadcasting Co. (KQV), Pittsburgh, Pennsylvania, 5 F. C. C. 584, 593.
In re Application of Royal Miller, Sacramento, California, 5 F. C. C. 643, 644.
In re Application of The Metropolis Company, Jacksonville, Florida, Decided October 25, 1938.
In re Application of Voice of Longview (KFRQ), Longview, Texas, Decided May 31, 1939.
In re Application of Civic Broadcasting Corp., Syracuse, New York, decided October 5, 1939.

(g) Lack of "need for service" (usually with a strong economic connotation) was ground for denial of applications in the following recent cases:

In re WSMB, Incorporated, New Orleans, Louisiana, 5 F. C. C. 55, 58, Decided January 12, 1938.
In re Richard Field Lewis, Oakland, California, 5 F. C. C. 67, 68, decided January 19, 1938.
In re Banks of Wabash, Inc. (WBOW), Terre Haute, Indiana, 5 F. C. C. 78, 83, Decided January 26, 1938.
In re Glenn E. Webster, Decatur, Illinois, 5 F. C. C. 78, 83, Decided January 26, 1938.
In re John C. Hughes, Phenix City, Alabama, 5 F. C. C. 120, 123, Decided February 2, 1938.
In re Gomer Thomas, Bellingham, Washington, 5 F. C. C. 124, 125, Decided February 2, 1938.
In re T. E. Kirksey, Waco, Texas, 5 F. C. C. 129, 131, Decided February 2, 1938.

In re Food Terminal Broadcasting Company, Cleveland, Ohio, 5 F. C. C. 160, 162, Decided February 19, 1938.

In re The Journal Company, Milwaukee, Wisconsin, 5 F. C. C. 201, 212, Decided March 2, 1938.

In re Mid-Atlantic Corporation, Washington, D. C., 5 F. C. C. 201, 212, Decided March 2, 1938.

In re Dr. Wm. States Jacobs, d/b as Dr. Wm. States Jacobs Broadcasting Company, Houston, Texas, 5 F. C. C. 227, 230, Decided March 9, 1938.

In re Warren B. Worcester; San Diego, California, 5 F. C. C. 231, 233, Decided March 23, 1938.

In re Smith, Keller, and Cole, San Diego, California, 5 F. C. C. 291, 295, Decided April 13, 1938.

In re Pacific Acceptance Corporation, San Diego, California, 5 F. C. C. 296, 300, Decided April 13, 1938.

In re Juan Piza, San Juan, Puerto Rico, 5 F. C. C. 327, 330, Decided April 20, 1938.

In re Fred M. Weil, Grand Coulee, Washington, 5 F. C. C. 369, 371, Decided May 11, 1938.

In re Curtis Radiocasting Corporation, Indianapolis, Indiana, 5 F. C. C. 372, 376, Decided May 11, 1938.

In re Fall River Herald News Publishing Company, Fall River, Massachusetts, 5 F. C. C. 377, 382, decided May 11, 1938.

In re Dallas Broadcasting Company, Richard S. Gozzaldi, d/b as The Oak Cliff-Dallas County Broadcasting Company, Centennial Broadcasting Corporation, all of Dallas, Texas, 5 F. C. C. 417, 426, decided May 11, 1938.

In re Arthur E. Seagrove, Lewiston, Maine, 5 F. C. C. 430, 442, decided May 11, 1938.

In re The Louisville Times Company, et al, Louisville, Kentucky, 5 F. C. C. 554, 562, Decided June 1, 1938.

In re Clark Standiford, L. S. Coburn, and A. C. Sidner, Fremont, Nebraska, 5 F. C. C. 570, 577, decided June 1, 1938.

In re The Colonial Network, Inc., Providence, Rhode Island, 5 F. C. C. 654, 664, Decided June 22, 1938.

In re Gerald A. Travis, La Porte, Indiana, 5 F. C. C. 689, 694, Decided June 28, 1938.

In re Waterloo Times-Tribune Publishing Co., Waterloo, Iowa, 5 F. C. C. 707, 711, decided June 29, 1938.

In re Great Lakes Broadcasting Corporation, Cleveland, Ohio, 5 F. C. C. 712, 717, Decided June 29, 1938.

(h) Economic injury to existing stations was specifically relied upon as a ground for denial of applications in the following recent cases:

In re Fall River Herald News Publishing Company, Fall River, Massachusetts, 5 F. C. C. 377, 382, decided May 11, 1938.
In re Genesee Radio Corporation, Flint, Michigan, 5 F. C. C. 183, 187, decided March 2, 1938.
In re R. R. Jackman, et al. (*WREN*), Lawrence, Kansas, 5 F. C. C. 496, 500, decided May 25, 1938.
In re The Louisville Times Company, et al, Louisville, Kentucky, 5 F. C. C. 554, 559, decided June 1, 1938.
In re Arthur Lucas, Savannah, Georgia, 5 F. C. C. 464, 467, decided May 25, 1938.

(i) In the Fall River Herald News Publishing Company case, *supra,* the Commission, under a factual situation substantially identical with that of the instant case, denied the application because of economic injury to the existing station, WSAR, in Fall River, Mass.

In re Telegraph Herald. (Decided July 2, 1937.)	*In re Fall River Herald, etc.* (Decided May 11, 1938.)
(1) "The Telegraph Herald on January 20, 1936, filed an application for construction permit for a new station to be located at Dubuque, Iowa, operating on the frequency 1340 kilocycles with 500 watts daytime. * * *"	(1) "Fall River Herald News Publishing Company, Fall River, Massachusetts, commenced this proceeding by filing its application for construction permit to install a new broadcast station to operate on the frequency of 1210 kc, with power of 100 watts night, 250 watts day, unlimited time."
(2) "The applicant, Telegraph Herald, is an Iowa corporation. The original charter of the corporation was amended so as to authorize the corporation to do	(2) "The applicant is a corporation organized under the law of the State of Massachusetts with authority to operate a radio broadcast station. Its authorized

In re Telegraph Herald (Cont'd)

all things incidental to the conduct of radio broadcast business. The stockholders of the corporation are all citizens of the United States. * * *

"The assets of the corporation total $1,097,712.36, * * *. The liabilities, * * *, are fixed at $1,097,712.36. The current liabilities are fixed at $160,000, thus leaving a net worth in excess of $840,000."

(3) "The corporation is now engaged in the publication at Dubuque, Iowa, of the Telegraph Herald, a daily newspaper. The Telegraph Herald maintains a reportorial staff in the City of Dubuque of five reporters, one society editor, and has approximately 150 county correspondents as a news gathering organization. The circulation area of the paper is approximately that of the trade area of the City of Dubuque. This paper has the franchise for the Associated Press, United Press, and International News service."

(4) "* * * The approximate cost of this equipment installed will be $25,000.00.

In re Fall River Herald, etc. (Cont'd)

capital stock is $1,000,000, divided into 10,000 shares of common stock, par value $100.00 each.

"All the stock has been issued and all the stockholders are American citizens. * * *

"* * *. The company has a surplus of $824,894.51 and current assets in the amount of $335,442.77. Its average daily cash balance is above $40,000."

(3) "The applicant was originally organized as the Fall River Daily Herald Publishing Company about the year 1877 and, according to the testimony, it took its present name about 1927. At that time the Fall River Daily News had been acquired and thereafter the applicant purchased the Fall River Daily Globe. It, therefore, is at present a consolidation of three newspapers; * * *."

(4) The estimated cost of the proposed construction is $18,400. Applicant esti

In re Telegraph Herald (Cont'd)

* * * The estimated monthly operating expense of the proposed station will be approximately $2,000.00. * * *"

(5) "Dubuque, Iowa, is situated in the northeastern portion of the state upon the west bank of the Mississippi River.

"The States of Wisconsin and Illinois lie directly across the river. East Dubuque, the present location of Station WKBB, is directly east across the Mississippi River from Dubuque. * * * The population of the City of Dubuque, according to the 1930 census, is 41,679.

"* * * The population is predominately rural and native white."

(6) "Station WKBB is the only station which delivers a signal of 10 mv/m in the business section of Dubuque. * * *"

In re Fall River Herald, etc. (Cont'd)

mates the revenue from operations as proposed at $2,000 per month. The estimated monthly operating expense of the station, operated as proposed is $1,985."

(5) "Fall River is a part of the Providence-Fall River-New Bedford metropolitan district. Providence, Rhode Island, and New Bedford, Massachusetts, are respectively 18 miles west and 14 miles east of Fall River, Massachusetts.

"The population of Fall River (1930 Census) is 115,274. * * *.

"Fall River has a diversified population. At the hearing it was testified that 30 percent or more of the people are French; that still more of them are Portuguese; and that a less proportion is Italian and Polish."

(6) "The intervener, Station WSAR, is located in Fall River, operating with power of 1 kw. Station WEAN, Station WJAR, and Station WPRO, located in Providence, Rhode Island, all render service in Fall River and in the territory adjacent thereto. Station WSAR supplies the signal strength of 10 mv/m or more in Fall River. * * *"

In re Telegraph Herald (Cont'd)

(7) "* * * The statement further discloses that the station sustained a deficit for the year 1935 of $4,165.85, while the deficit for the eight months of 1936 was only $475.28, indicating an improved financial condition in the operation of the station. * * *

"The programs offered the listening public by Station WKBB are of high standard, well balanced and meritorious."

(Findings)

(8) "* * * The record shows that there is need for broadcast facilities, centered in Dubuque, to serve the trade area of that city and the surrounding rural country.

* * *

"After careful consideration of the application(s), * * * the Commission, Broadcast Division, was of the opinion, and so found, that public interest, convenience and necessity will be served by granting the application(s) of Telegraph Herald * * * for construction permit(s). * * *"

In re Fall River Herald, etc. (Cont'd)

(7) "* * * Station WSAR, acording to the testimony of the general manager of the applicant, appears to be without unlimited means although as above shown it is rendering an aceptable and sufficient service in Fall River. Station WSAR, according to the record, was established in 1921 but it has made an operating profit for only a short while immediately before the hearing of the case. * * *"

(Findings)

(8) "* * * There is nothing in the testimony before the Commission to encourage the belief that two local broadcast stations in Fall River would find sufficient financial support to sustain themselves, nor that the existing station could survive the reasonably expected rivalry of the Fall River Herald News Publishing Company, and since the performance of the existing station is acceptable and sufficient the application for permit to construct another station should be denied.

* * *

"1. The Fall River, Massachusetts, area has adequate broadcast service.

In re Fall River Herald, etc. (Cont'd)

"2. The applicant has not shown a public need for the radio broadcast service he proposes.

"3. The record does not show that sufficient commercial support could be reasonably expected to enable the existing station to continue its operations and at the same time to sustain the applicant in its proposed operations.

• • •

"5. The granting of the application under consideration would not serve public interest, convenience or necessity."

In the Genesee Radio Corporation, *supra*, the Commission in the course of its opinion stated:

"* * * Further, to permit the entry into the field of this applicant might well, from an economic standpoint, prevent the future entry into the field by an applicant who would offer a new, different, improved and competitive service."

(j) The Federal Communications Commission (prior to August 1, 1939) ordinarily refused to grant without hearing an application for a new station in a community unless it appeared that this would not aggrieve or adversely affect the interest of any licensee of an existing station in that community (see Rules 44 and 104.6, *supra*). Existing stations which might be economically injured by a new station, with but few exceptions, were always permitted to intervene as a party in the proceeding. For example, on

September 24, 1935 the Commission permitted the licensee of Station WOL in Washington, D. C. to intervene on economic grounds in opposition to the application of Monocacy Broadcasting Co. for a new station near Rockville, Maryland. (See F. C. C. Minute #235, Broadcast Division.) The Commission, in a brief justifying its position (filed in the Court of Appeals of the District of Columbia about February, 1937), asserted that it appeared from Station WOL's petition to intervene on economic grounds:

> "* * * *that the granting of the appellant's application would* aggrieve or adversely affect the interests of the intervener." *(Monocacy Broadcasting Co.* v. *Prall et al.*, 90 F. (2d) 421.)

In one instance, the Commission on August 14, 1934 denied Radio Station WREN leave to intervene upon economic grounds in opposition to the application of WHB Broadcasting Co., Inc., Docket 2423. (See *Jenny Wren Co.* v. *Sykes, et al.*, 78 F. (2d) 729.)

(k) Economic injury to existing stations (independent of the filing of petitions to intervene) was expressly made one of the issues in numerous notices of hearing recently issued by the Commission (before August 1, 1939). For example, see notices of hearing issued in the following cases:

In re Associated Broadcasters, Inc., Docket No. 5190.
In re O. W. Lyerla, Docket No. 5195.
In re Emile Denemark, Docket No. 5181.
In re A. Corensen, d/b North Western Broadcasting Association, Docket No. 5395.

The issue in these and other cases was stated as follows:

"To determine whether the economic interests of any other stations may be adversely affected."

or

"To determine whether the economic interests of any other stations or applicants may be adversely affected, particularly the following existing stations:"

(l) Also in several instances where the Federal Communications Commission granted applications without hearing the grants were reconsidered and persons protesting such grants on economic grounds were thereafter accorded a hearing. See, for example:

In re Wichita Falls Broadcasting Co., Docket No. 3240.
In re North Corp., Docket No. 4171.

(m) In the instant case the Commission permitted intervention by Sanders Bros. Radio Station on the ground of apprehended economic injury and throughout the proceedings before it the Commission recognized the issue as a legitimate one in the case. In its petition for rehearing filed before the United States Court of Appeals February 9, 1939, the Commission stated:

> "We do not wish to minimize the importance of a consideration by the Commission of the effect of competition between a proposed new station and existing stations before the Commission grants a license for the proposed new station. Unquestionably, the Commission should, in determining whether the 'public interest, convenience and necessity' will be served by the licensing of a new station in a community, give careful and painstaking consideration to the question of whether the effect of granting the new license will be to defeat the ability of the holder of any one or more outstanding licenses to carry on in the public interest. The Commission is entirely in accord with the view that if the effect of granting a new license would be to defeat the ability of the holder of an outstanding license to carry on in the public interest, the application for the new station should be denied unless there are 'overweening' reasons of a public nature for granting it. And the Commission also believes that it is obviously a stronger case where neither licensee will be financially able to render adequate service. It is the Commission's endeavor to determine in every case whether service to the public will be benefited or adversely affected by its action on an application."

(n) Up until October 2, 1939 (one month prior to the filing of its petition for writ of certiorari in this case), the Federal Communications Commission regularly permitted existing stations or other persons to intervene in hearings upon applications for new stations based upon economic injury.

Since the Commission's current Rules of Practice and Procedure (4 F. R. 3341) became effective August 1, 1939, there has been at least one instance where the licensee of an existing station was permitted to intervene upon economic grounds. On September 15, 1939 Station WLBZ was permitted to intervene on this ground in opposition to the application of WABI, Bangor, Maine (Docket No. 5677).

On October 2, 1939 (one month prior to filing the petition for writ of certiorari herein), however, the Commission refused to permit Orlando Broadcast Company, Inc., licensee of Station WDBO, Orlando, Florida, to intervene on economic grounds in the hearing upon the application of Hazelwood, Inc. for a new station in Orlando, Florida, Docket No. 5698. A formal opinion denying the petition to intervene was rendered by the Commissioner presiding at the Motions Docket. The denial of intervention was affirmed by the Commission *en banc* October 11, 1939.

2. *Actions on Transfers of License or Control under Sec 310(b).*

Economic considerations were taken into account in the Commission's decisions as to "public interest" in giving or refusing its consent to the following transfer or assignment applications:

In re Pickwick Broadcasting Corp. et al, Docket Nos. 960, 964, 976 & 981, Decided May 29, 1931.

In re Kingshighway Presbyterian Church, et al, Docket Nos. 1012, 1011 & 1010, Decided June 12, 1931.

In re Oklahoma College for Women, et al, Docket Nos. 1243, 1244 & 1249, Decided October 30, 1931.

In re Ohio Broadcasting Corp. et al, Docket Nos. 1168, 1175, 1173 & 1387, Decided December 22, 1931.

In re William S. Pate, Docket No. 1302, Decided January 18, 1932.

In re Pine Tree Broadcasting Corp. et al, Docket Nos. 1233 & 1446, Decided April 1, 1932.

In re Hale Bros. Stores, Inc., et al, Docket Nos. 1615 & 1614, Decided June 10, 1932.

In re WJSV, Inc., Docket No. 1656, Decided June 10, 1932.

In re Homer F. Bryant, d/b Bryant Radio & Electric Co. et al, Docket Nos. 1375, 1470, 1412, 1465, 1467 & 1473, Decided July 1, 1932.

In re Arthur Faske, et al, Docket Nos. 1501, 1538, 1784 & 1785, Decided November 18, 1932.

In re F. J. Reynolds, Docket Nos. 2180 & 2181, Decided December 9, 1933.

In re Earle C. Anthony, Inc., et al, Docket Nos. 1830, 1992, 1956, 1963, 1964 & 1957, Decided January 26, 1934.

In re KRGV, Inc., Docket Nos. 2144, 2149, 2207 & 2253, Decided June 22, 1934.

In re Red Oak Corp., 1 F. C. C. Rep. 163, Decided October 2, 1934.

In re Gillette Rubber Co., 2 F. C. C. Rep. 127, Decided September 24, 1935.

In re Lancaster Broadcasting Service, Inc., et al, 2 F. C. C. Rep. 164, Decided October 28, 1935.

In re United States Broadcasting Corp., et al, 2 F. C. C. Rep. 208, Decided December 17, 1935.

In re Western Broadcasting Co., 3 F. C. C. Rep. 179, Decided August 18, 1936.

In re First Congregational Church of Berkeley, 3 F. C. C. Rep. 417, Decided October 20, 1936.

In re W. J. Reynolds, Jr., J. C. Hughes and J. S. Allen, d/b as Selma Broadcasting Company, 4 F. C. C. Rep. 382, Decided July 20, 1937.

In re United States Broadcasting Corporation, et al, 4 F. C. C. Rep. 521, Decided June 29, 1937.

In re The WGAR Broadcasting Company, 4 F. C. C. Rep. 540, Decided July 2, 1937.

In re William Penn Broadcasting Company, et al, 4 F. C. C. Rep. 627, Decided September 21, 1937.

In re R. S. Bishop, transferor, and Mrs. Ruth G. Roosevelt, transferee, 5 F. C. C. Rep. 301, Decided April 13, 1938.

In re Exchange Avenue Baptist Church of Oklahoma, 5 F. C. C. Rep. 333, Decided April 20, 1938.
In re P. R. Jackman, et al, 5 F. C. C. Rep. 496, Decided May 25, 1938.
In re J. L. P. Robinson, 5 F. C. C. Rep. 623, Decided June 22, 1938.
In re Anna Atkinson, Docket No. 4945, Decided August 10, 1938.
In re W. W. McAllister, Docket No. 4981, Decided September 6, 1938.
In re Fifth Avenue Broadcasting Corporation, Docket No. 4969, Decided September 6, 1938.
In re Associated Broadcasters, Inc., Docket No. 4208, Decided October 18, 1938.
In re Charles H. Gurney, Docket No. 4827, Decided October 18, 1938.
In re The Travelers Broadcasting Service, Docket No. 4692, Decided November 1, 1938.

By way of illustration—the Commission in its decision upon the assignment application of Frank P. Jackson, Docket No. 2207 (cited above In re KRGV, Inc), made the following statement in its findings:

> "It is to be expected, of course, that on the removal of Station KWWG to Port Arthur, Station KFDM, Beaumont, would lose certain broadcasting business this station has had from Port Arthur College. Station KFDM represents a substantial investment of capital, and it appears that the operation of the station by the interveners has resulted in losses over certain periods. The interveners have not shown sufficient reasons or grounds, however, to warrant keeping the Port Arthur area open for the business of the intervener's station to the exclusion of the establishment of a broadcast service in that city."

The Commission in its decision upon the application of F. J. Reynolds, Docket No. 2180, *supra*, made the following finding:

> "* * * it appears that economic conditions favor the proposed move. Tampa has a population of about

101,000, while Jacksonville has a population of about 140,000. A comparison of the business activities of the two cities on the basis of the somewhat general evidence we have indicates that the larger city, as would logically be expected, has more busines and more industries from which radio stations might draw commercial support."

Also in the majority of cases above cited, the Commission in determining whether or not to grant or refuse its consent in the public interest to the transfer of control or assignment of license applications, took into consideration the amount of the purchase price. (See cases collected in Federal Communications Bar Journal, November, 1938, pp. 16-29).

A departure from this practice was first evidenced in the Commission's decision upon the application of *City of Atlantic City*, Docket Nos. 5350 and 5351, decided October 26, 1939.

3. *Actions on Permits to Export Radio Programs Under Sec. 325*

The Commission in its decision of July 28, 1939 upon the application of Mutual Broadcasting System, Inc., Docket No. 5219, for authority to transmit programs to Canada as provided in Section 325 of the Act, took into account economic considerations in determining that the granting of the application would serve public interest, convenience, and necessity. The Commission in its findings held:

"4. This record does not disclose sufficient facts to justify Station WJBK's claim that it has been impaired by unfair practices. Therefore, at this time, consideration of the maintenance of a free interchange of programs with stations licensed by the Government of Canada outweighs the present suggestion of possible adverse effect upon the service rendered by the American station."

In its decision *In re Nellie H. and W. C. Morris, d/b Hotel Eagle*, 2 F. C. C. Rep. 269, the Commission in denying a permit pursuant to Section 325(b) said (p. 271):

> "It appears from the record that acceptable broadcasting service is now received from several stations in the listening area covered by Station XEPN, and these include KTSA and WOAI. * * *
>
> "The Commission considers, as an element of public interest, the economic factor involved in this application. Against this, however, it must weigh the need for this service, the character of the service rendered by this station, the fact that the applicants have no control over the programs to be transmitted from their studio, and can exercise no censorship over them, * * *."

The Commission, *In re T. Yount, d/b Universal Advertising Agency*, 2 F. C. C. Rep. 200, found that public interest, convenience, or necessity would not be served by granting an application as required by Section 325. In the course of its opinion the Commission said (p. 205):

> * * * There is no substantial evidence of any demand for advertising service to be supplied by the applicant; the only sales the Universal Advertising Agency solicitor, who works for a commission, has been able to make have been so-called spot announcements presented without sponsored programs. None of the testimony adduced on this subject is regarded as having any substantial probative value, but it is reported here as being the gist of the evidence relating to public interest in the plan presented by the applicant, who has the burden of showing that there exists a public necessity for the proposed service."

IV. *Exercise of Regulation-Making Powers Under Sec. 303.*

The matter of economic injury and competitive effect have frequently been considered relevant by the Commission in applying the standard of "public convenience, interest, or necessity" to its regulation-making functions under Section 303.

(a) The Federal Radio Commission in its notices of hearing (August 27, 1930) upon the applications of the licensees of WHAM and 23 other stations for authorization to increase power to 50 kw., involving amendment of regulations then in force limiting the number of 50 kw. stations, expressly included the following issue:

> "The granting of this application may aggrieve or adversely affect the interest of a holder of a permit, license, or other instrument of authorization from the Commission, or of an applicant therefor."

In the course of its opinion on the above so-called "high-power" cases of 1930, *In re Stromberg-Carlson Telephone Manufacturing Company, et al.*, Docket Nos. 870 et seq., dated November 17, 1931, the Commission said:

> "The installations requested by these applications involve expenditures of large sums of money. Stations may be required to forfeit facilities for many reasons, among which are the above, and as a result thereof suffer loss in investment and property. This possibility would be minimized if General Order 42 were adhered to. The Commission should hesitate to permit the expenditure of money with knowledge that it may soon be forced to require the wholesale scrapping of property. A proper application of the statutory standard, requires that the Commission take these and many other factors into consideration in promulgating an order of general application. * * *"

(b) Economic issues were extensively considered by the Commission in its hearings and reports preparatory to the

adoption of its currently effective rules governing standard broadcast stations and standards of good engineering practice (4 F. R. 2714, and 2862).

The "notice of informal hearing before the Broadcast Division of the Federal Communications Commission, beginning October 5, 1936," Docket No. 4063, contained the following issue on the allocation proposals, *inter alia*, for increase of power of clear channel stations to 500 kw:

> "VI. *Effect of any proposals regarding the foregoing subjects.*
>
> "1. Socially and economically, upon the public and the industry."

On January 11, 1937 a 43 page preliminary engineering report to the Broadcast Division presenting findings and conclusions based on the evidence heard at the October 5, 1936 hearing was rendered in which the following recommendations were made (p. 8):

> "(14) While we believe that powers in excess of 50 kw on clear channels are technically sound and are in accord with scientific progress, we recognize that *social and economic factors* involved in the use of 500 kw *may outweigh in importance engineering considerations*, and request instructions from the Division as to its desires with respect to regulations on the question of super-power. We feel that, in the matter of super-power, the Commission should give full consideration to our report summarizing the economic testimony in the October 5 hearing prior to making a decision.
>
> * * * * * *
>
> "(18) We suggest *the paramount importance of economic and social factors* in the determination of the distribution of facilities to licensees in any section of the country, and state that a separate report will be submitted giving in detail a summary of the evidence presented at the October 5 hearing prior to making a decision." (Italics supplied.)

—(Mimeograph Release No. 19557)

On January 24, 1938 there was released a report (dated July 1, 1937), on Social and Economic Data Pursuant to the Informal Hearing on Broadcasting, Docket No. 4063, in which the following extracts appear (see Mimeograph Release 23454, 132 pages, with extensive appendices A-K inclusive, pp. 9, 11, 12):

"Section II.

"Importance of Social and Economic Factors

* * * * *

"B. Definitions of 'Social' and 'Economic'

* * * * *

"(2) 'ECONOMIC.' The aspects of radio broadcasting with its activities as a business. Included in this category are:

* * * * *

"(c) The economic problems raised by the *competitive aspects* of the broadcast structure, including competition between individual stations, competition between classes of stations, competition between network on the one hand and individual stations on the other, and competition between networks themselves. Related to this group of problems are others which must be passed over with mere mention, such as competition by broadcasting stations, organizations or groups for the sources and materials of program service, including music, talent, etc. The underlying doctrine of the Communications Act of 1934 is rightfully that which encourages competition and discourages monopoly in any form both direct and indirect."

(p. 121):

"The question of the technical feasibility of power in excess of 50 kw has been discussed in the Engineering Department's January report, which indicated that powers as great as 500 kw are technically sound.

"On the other hand, the evidence shows that there will be economic effects, particularly if many stations should be granted such power as 500 kw. We are un-

able to predict the absolute degree of good or bad effects because of the lack of substantial evidence, and because to predict whether or not an individual application for super power would be in the interest of the public, would amount to prejudicial determination of all the merits or demerits of any specific application. Therefore it appears to the Engineering Department that the Commission must consider each individual application on the basis of the evidence presented. Nevertheless, even in the determination of individual cases the Commission should proceed with caution and assure itself that all the elements are properly presented or considered in the disposition of such applications." In this connection, when applicants for licenses to operate stations with powers in excess of 50 kw are heard by the Commission, they and all other interested parties should be given the opportunity to present evidence *on the broad social and economic effects* of such super power operation." (Italics supplied.)

* * * * * *

"V. Conclusions.

* * * * * *

"7. *The competitive effect* of 500-kw stations upon regional stations and local stations remains primarily speculative. The comparatively narrow margin existing between technical costs on a 500-kw basis and probable revenues seems to indicate that an intensification of competition, wherever this is possible, will ensue. But the extent of this competition, its exact nature, and its ultimate effect remain speculative." (Italics supplied.)

(c) On June 6, 1938 a hearing before a Special Committee of Commissioners was held on the "Proposed Rules Governing Standard Broadcast Stations and Standards of Good Engineering Practice," Docket No. 5972-A. The Commission's notice of hearing (February 21, 1938), included the following issues:

"7. To determine whether an increase in power on clear channels will tend to or result in a decrease in competition between stations and whether the service to the public will be affected thereby.

"8. To determine what charges will be necessary to support the operation of clear channel stations at additional power, whether such charges may be borne by the commercial support available and whether such charges will have an adverse effect upon the character of program service rendered."

On April 4, 1938 the Commission issued formal notices of hearing on pending applications for increase in power to 500 kw (see Docket. Nos. 4165, 4230, 4361, 4419, 4093, 4110, 4164, 4024, 4090, 4091, 4092, 2779, 3962, 3963 and 3985). One of the issues set forth in said notices of hearing was:

"9. To determine whether the interference or *conflict in any other manner* may be had with the interests of any other licensed broadcast stations." (Italics supplied.)

On January 18, 1939 said Committee of Commissioners issued Part I of its report, consisting of 31 pages (mimeo-

graph No. 31703). On April 1, 1939 Part II of said report was released, consisting of 149 pages together with extensive appendices (mimeograph release Nos. 32825 and 32825-A).

The following illustrates the extensive consideration given to economic factors (Sec. II, pp. 8, 10):

"Super Power.

* * * * *

"The evidence shows conclusively that, from a technical standpoint, the use of power in excess of 50 kw has a distinct advantage because it provides better quality service to the vast population residing in rural areas and in towns which neither have broadcasting stations of their own nor are located within the primary service area of any station. * * *

"Unfortunately, however, the evidence also indicates that there are possible *disadvantages of an economic and social character* in removing the power limitation. * * * (Italics supplied.)

"Thus the question of super power, from the standpoint of the general public throughout the nation as a whole, involves a determination of whether the resulting advantages to be gained in the improvements of radio service to listeners in rural areas by means of super power operation from a few stations properly located in the country, are outweighed by the possible disadvantages resulting from *adverse economic effects of such super power operation upon a large number of smaller power stations primarily serving the smaller Metropolitan areas.* * * *. (Italics supplied.)

* * * * *

"In view of the foregoing considerations, the Committee recommends that the proposed rule be not changed at this time, but in lieu thereof, that the Commission proceed on a more intensive accumulation of facts and a consequent study of *the economic factors involved.* * * *" (Italics supplied.)

(p. 4)

"Practical Aspects.

"* * * It is essential therefore that the Commission give proper weight to the economic and engineering factors inherent in the successful operation of a nation-wide broadcasting system. While it is impossible to divorce the social use of broadcasting facilities from engineering and economic limitations, and while the first consideration of the Commission must be that of securing the finest radio transmission facilities possible, *the second responsibility of the Commission is that of making radio service operate in the public interest in such a manner that the structure of broadcasting is sound economically as well as technically.*" (Italics supplied.)

The Commission's Rules Governing Standard Broadcast Stations (4 F. R. 2714) and Standards of Good Engineering Practice (4 F. R. 2862) were adopted June 23, 1939, effective August 31, 1939. The Commission's reason for refusing to authorize the use of power in excess of 50 kw was summarized in its Annual Report to Congress. (F. C. C. Annual Report, June 30, 1939, p. 40):

"(4) * * *

* * * * *

"(e) * * *

"There is no doubt, from an engineering standpoint, that the use of power in excess of 50 kilowatts constitutes one method whereby additional service can be provided throughout the remote sparsely populated sections of the United States and to many small urban centers which now lack facilities or where it is not economically practical to support local or regional channel stations. However, for social and economic reasons the rules do not contemplate the use of power greater than 50 kilowatts at this time."

(d) On November 14, 1938 the Commission held a hearing *In re Investigation of Chain or Network Broadcasting,*

etc., Docket No. 5060. The hearing was instituted pursuant to Order No. 37, issued March 18, 1938, which provided in part:

> "That the Federal Communications Commission undertake an immediate investigation to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity; such investigation to include an inquiry into the following specific matters, as well as all other pertinent and related matters including those covered in the Report on Social and Economic Data prepared by the Engineering Department of the Federal Communications Commission and filed with the Commission on January 20, 1938."

One of the issues set forth in the Commission's notice of hearing was:

> "10. Competitive practices of stations engaged in chain broadcasting as compared with such practices in the broadcasting industry generally."

The network investigation hearing was concluded May 19, 1939. No report has yet been issued. Competition between networks, stations affiliated with networks, and non-affiliated stations was among the more important issues covered by the hearing.

(e) Section 4.43 of the rules relating to international broadcast stations sets forth the restrictions placed upon programs. Subsections (1) through (5) of Section (b) of Rule 4.43 set forth the restrictions upon the broadcasting of commercial programs. These subsections are as follows:

> "1. Commercial program continuities give no more than the name of the sponsor of the program and the name and general character of the commodity, utility or service, or attraction advertised.

"2. In case of advertising a commodity, the commodity is regularly sold or is being promoted for sale on the open market in the foreign country or countries to which the program is directed in accordance with subsection (c) of this section.

"3. In case of advertising an American utility or service to prospective tourists or visitors to the United States, the advertisement continuity is particularly directed to such persons in the foreign country or countries where they reside and to which the program is directed in accordance with subsection (c) of this section.

"4. In case of advertising an international attraction (such as a world fair, resort, spa, etc.) to prospective tourists or visitors to the United States, the oral continuity concerning such attraction is consistent with the purpose and intent of this section.

"5. In case of any other type of advertising, such advertising is directed to the foreign country or countries and to which the program is directed in accordance with subsection (c) of this section and is consistent with the purpose and intent of this section."

Rule 4.43 was suspended by the Commission on July 14, 1939 and is not yet effective. It was suspended because of the provisions of Section (a) of Rule 4.43, stating that an international broadcast station shall render only service which will "reflect the culture of this country and which will promote international goodwill, understanding and cooperation." In July, 1939, the Commission held a hearing, at which time evidence was introduced relating to the propriety of Section (a) of Rule 4.43.

(f) Other indications of the consideration by the Commission of economic factors in the allocation of broadcast stations is shown by the proposed television rules which were set for public hearing January 15, 1940. The proposed television rules are contained in a release of the Commission, dated December 26, 1939 (Mimeograph No. 38225). That

the Commission is taking economic factors into consideration, is shown particularly by Section 4.73(c), which states:

> "(c) Quarterly reports shall be made to the Commission by Class II television broadcast stations of the charges and costs as well as of other pertinent information which may be of assistance to the Commission in evaluating the economic feasibility of television broadcasting as a regular service to the public on a commercial basis."

Other subsections of 4.73 are also relevant. Subsection (a) provides:

> "(a) No charges either direct or indirect shall be made for either the production or transmission of either aural or visual programs by Class I television stations;"

Subsection (b) provides:

> "(b) No charges either direct or indirect shall be made for the transmission of either aural or visual programs by Class II television stations; however, Class II television broadcast stations may make charges to cover cost of program production, including advertising material, which programs may be transmitted as an experimental program service but without charge for such transmission;"

Subsection (d) provides:

> "(d) The offering by any person of the facilities of any television broadcast station on a regular commercial basis is prohibited. The limited commercialization permitted under subsection (b) above shall not take precedence over the experimental service, but shall in fact be subordinated to it."

V. *Exercise of Inquisitorial Functions.*

(a) The Commission from time to time has required detailed financial reports from radio station licensees and from network organizations. The gathering of such material has been justified on the ground that it was pertinent to the performance of various of the Commission's functions in the regulation of radio broadcasting and particularly in the exercise of its regulation-making powers.

On January 1, 1939 the Commission put into effect the following rule (p. 45):

> "Sec. 15.11 *Financial Statements.* Each licensee of a standard broadcast station shall file with the Commission on or before March 1 of each year on Forms 705 and 706, or such other forms as may be prescribed by the Commission, a balance sheet showing the financial condition of the licensee as of December 31 of the preceding year and an income statement for the preceding calendar year. Each such form shall be subscribed as provided in Section 7.01."

These forms (705 and 706) required information as identified by the following headings: General balance sheet; Unappropriated earned surplus; Undistributed profits; Broadcast plant in service of licensee; Broadcast plant leased to others; Improvements and replacements of broadcast plant leased from others; Leaseholds and other intangibles in broadcast service of licensees; Station broadcast revenues; Sale of station time to networks; Sale of station time to stations; Broadcast expenses; Total compensation of employees by months; Employees and their compensation for the week beginning December 11, 1938; Types of sustaining program material broadcast, and Types of commercial program material broadcast; Income statement for the year.

On August 1, 1939 the Commission put into effect Rule 1.361, being substantially similar to the preceding Rule 15.11 *supra.*

On January 15, 1940 the Commission, pursuant to Sec. 1.361, *supra*, released new financial report forms (mimeograph release No. 38522). One form consists of a 21 page booklet entitled "Annual Financial Report for Standard Broadcast Stations and Networks" which has the following schedules: General balance sheet; Analysis of unappropriated earned surplus; Analysis of undistributed profits; Tangible property owned and devoted exclusively to broadcast service by the respondent; Intangible property owned and devoted exclusively to broadcast service by the respondent; Property intended for use in broadcast service and leased to others; Income statement; Analysis of station broadcast revenues; Analysis of time devoted to networks; Analysis of broadcast expenses; Total compensation of proprietors, partners, broadcast staff, employees, officers, musicians and other talent; Employees and their compensation for the week beginning October 15, 1939.

The second form consists of a 13 page booklet entitled "Instructions Relating to Annual Financial Report."

In addition to the foregoing, the Commission's renewal application, Federal Communications Commission form 303, requires such information as the following: Average percent of time per month devoted to commercial programs; Average number of hours sold per month; Average gross income per month, etc.

(b) Heretofore, the Commission, on complaint or otherwise, has conducted investigations into business practices of radio station licensees. In numerous instances as a result of such investigations, the renewal applications of such licensees have been set down for hearing. By way of illustration—this work is summarized in the First Annual Report of the Federal Communications Commission, 1935, (pp. 16, 17):

> "In the past fiscal year there has been a notable increase in complaints to the Commission of stations broadcasting objectionable programs, and the Com-

mission has made an extensive inquiry into these complaints under the provisions of the Communications Act of 1934 and its rules and regulations promulgated pursuant thereto. Formal action was taken with regard to 226 separate objectionable programs broadcast over 152 stations. Some action was taken with regard to a much larger additional number of complaints involving several more stations, but these were adjusted informally. The broadcasting of false, fraudulent, and misleading advertising in various guises has been the chief source of complaint. In many instances the Federal Trade Commission, the Post Office Department, and the Food and Drug Administration had taken action to curtail the objectionable activities of medical advertisers in printed form, the result being that these advertisers resorted to broadcasting in order to disseminate their misleading and often fraudulent sales propaganda. This section handles all matters of inquiry and enforcement from their initial stages to final Commission action."

By way of further illustration, the Commission on November 20, 1939 ordered the grantee of a construction permit, Kentucky Broadcasting Corporation, to show cause why its permit should not be cancelled (see mimeograph release No. 37603). The action arose out of an allegation of competitive injury to Kentucky Broadcasting Corporation (Louisville, Kentucky) by reason of additional hours of operation granted to Station WGRC in an adjacent community (New Albany, Indiana). Station WGRC had been granted night-time hours of operation without hearing, October 10, 1939.

APPENDIX C.

Miscellaneous Documents.

Petitioner's motion to dismiss in the United States Court of Appeals for the District of Columbia. (Filed Jan. 24, 1938).

"Now comes the Federal Communications Commission and moves to dismiss the above-entitled appeal for the following reason, to wit:

"This Court is without jurisdiction to entertain the proposed appeal because it appears from the face of the Notice of Appeal and Reasons Therefor on file herein that said appeal has not been taken within the time provided by Section 402(c) of the Communications Act of 1934 (48 Stat. 1093), viz., twenty days from July 27, 1937, the effective date of the decision of the Commission of which appellant complains.

"Wherefore, the Federal Communications Commission prays that this Court enter its Order dismissing this appeal.

"FEDERAL COMMUNICATIONS COMMISSION

By (sgd) HAMPSON GARY,
General Counsel.

(sgd) GEO. B. PORTER,
Assistant General Counsel.

(sgd) FANNEY NEYMAN,
Assistant Counsel."

Excerpts from Commission's Petition for Rehearing.

(Filed in the United States Court of Appeals for the District of Columbia Feb. 9, 1939)

Petition for Rehearing and Motion for Stay of Mandate.

"To the Honorable, the Chief Justice, and the Associate Justices of the United States Court of Appeals for the District of Columbia:

"The Federal Communications Commission petitions the court to reconsider its decision of January 23, 1939 reversing the decision of the Commission rendered July 2, 1937 granting the application of Telegraph Herald for a construct ı permit authorizing the construction and operation of a radiobroadcast station at Dubuque, Iowa, on 1340 kc, 500 watts, daytime only.

"The Commission respectfully submits that (1) a fundamental jurisdictional question which is present in this case has not heretofore been argued to this court and was not considered by this court in its decision, and (2) a fundamental question going to the merits of this appeal has not heretofore been argued to this court and was not considered by the court in its decision.

"This petition has been filed because the two fundamental questions referred to above are of such character and importance that the Commission does not consider it appropriate to raise them in an application for certiorari to the Supreme Court without having first raised them before this court.

* * * * *

"The Fundamental Jurisdictional Question in this Case.

"The fundamental jurisdictional question in this case is whether a appeal can be taken to this court under Section 402(b)(2) of the Communications Act of 1934 by

a person whose appealable interest arises from prospective pecuniary damage resulting from competition.

"The Fundamental Question on the Merits.

"The fundamental question on the merits of this case, assuming the appellant has an appealable interest, is whether the Commission is required by the Communications Act of 1934 to make any findings of fact where it grants an application under Section 309(a) of the Act.

"Reasons Why These Fundamental Questions Were Not Previously Raised by the Commission.

"The Commission did not raise either the aforementioned jurisdictional question or the question of the necessity for making findings when the Commission grants an application under Section 309(a) of the Act because neither of those points was considered to be a *sine qua non* of the Commission's case in this appeal. As to the jurisdictional question, the Commission heretofore took the position that the appellant could not sustain its allegation of economic injury through the establishment of the additional station by the intervener. In other words, the Commission heretofore assumed, *arguendo,* that financial loss as a result of competition from a broadcast station authorized by order of the Commission, if proved, would constitute a basis for an appeal under Section 402(b)(2) of the Act, and argued that the appellant in this case has failed to prove its alleged economic injury. The jurisdictional point now raised is, assuming *arguendo* that the appellant can prove that it will suffer pecuniary loss from competition with the new station of the intervener, such loss is *damnum absque injuria.*

"As to the necessity for findings by the Commission on the question of economic injury to the appellant, the Commission's position heretofore has been that, assuming, *arguendo,* the necessity for findings on this subject, the Com-

mission has made adequate findings. The point raised in this Petition for Rehearing is that, assuming *arguendo* that the Commission has not made findings on the subject of economic injury to the appellant by the establishment of the new station of the intervener, the Commission's decision is not defective for this reason because it is not necessary for the Commission to make any findings when it grants an application for a construction permit under Section 309(a) of the Act.

* * * * *

"Argument.

This Court Has no Jurisdiction to Entertain this Appeal Because the Appellant Has no Appealable Interest Under Section 402(b) (2) of the Communications Act of 1934.

* * * * *

"The Commission's argument is this: The issue of 'economic injury to an existing station through the establishment of an additional station' is not sufficient to furnish proper grounds of contest on appeal under Section 402(b) (2) of the Communications Act of 1934 because it tenders an issue of *damnum absquo injuria*.

* * * * *

"We do not wish to minimize the importance of a consideration by the Commission of the effect of competition between a proposed new station and existing stations before the Commission grants a license for the proposed new station. Unquestionably, the Commission should, in determining whether the 'public interest, convenience and necessity' will be served by the licensing of a new station in a community, give careful and painstaking consideration to the question of whether the effect of granting the new license will be to defeat the ability of the holder of any one or more outstanding licenses to carry on in the public in-

terest. The Commission is entirely in accord with the view that if the effect of granting a new license would be to defeat the ability of the holder of an outstanding license to carry on in the public interest, the application for the new station should be denied unless there are 'overweening' reasons of a public nature for granting it. And the Commission also believes that it is obviously a stronger case where neither licensee will be financially able to render adequate service. It is the Commission's endeavor to determine in every case whether service to the public will be benefited or adversely affected by its action on an application.

"It is also the Commission's position that whenever the Commission, in considering an application for a new station does not so apply the standard of public interest, convenience and necessity as required by the statute, this court, *upon an appeal properly taken*, may and should set aside the decision of the Commission. But, however improperly the Commission may have acted in a given case, there is no jurisdiction for this court to entertain an appeal from the decision of the Commission in such case under Section 402(b)(2), unless the appeal is brought by a person who is 'aggrieved' or whose interests are 'adversely affected', by the Commission's decision. If an erroneous decision of the Commission does not invade a person's legal rights or legal interests such person has no standing to invoke the appellate jurisdiction of this court to review the action of the Commission, and this court may not, regardless of the merits of the case, assume jurisdiction.

"It is submitted that the court should hold that no person, whether he be a licensee of an existing radiobroadcast station located in the same city, or in some other city, or whether he be engaged in some other form of advertising, suffers any legal injury from competition which results from the establishment of a new radiobroadcast station, even though the establishment of such station may cause such person substantial financial damage.

* * * * *

"Assuming the Court has Jurisdiction, the Court Erred in Remanding the Case for the Purpose of Making Findings.

* * * * * *

"The Commission's argument is this: Although the statute requires the Commission to make findings in cases where it denies an application under Section 309(a), the statute does not require the Commission to make any findings when it grants an application under Section 309(a). Whether or not the Commission makes findings in cases where it grants applications is entirely a matter of administrative discretion and not a fullfilment of a statutory duty. The issuance of findings in cases where the Commission grants an application is analogous to announcements made by other agencies of their reasons for executive or administrative action under their respective statutes. Such announcements may, in the discretion of the agency, be as complete or as meager as the agency chooses.

* * * * * *

"For the foregoing reasons, it is respectfully requested that the Court vacate its judgment in the instant case and in the alternative either dismiss this appeal or affirm the decision of the Commission.

"Respectfully submitted,

"FEDERAL COMMUNICATIONS COMMISSION,
(sgd) WILLIAM J. DEMPSEY,
General Counsel.
(sgd) WILLIAM C. KOPLOVITZ,
Assistant General Counsel.

APPENDIX D.

ADDITIONAL RELEVANT PROVISIONS OF THE COMMUNICATIONS ACT OF 1934.

The relevant sections of the Communications Act of 1934 not found in the Appendix to the Commission's brief are as follows:

"Definitions

"Sec. 3. For the purposes of this Act, unless the context otherwise requires—

* * * * *

"(o) 'Broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

* * * * *

"Provisions Relating to the Commission

* * * * *

"Sec. 4. * * *

* * * * *

"(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

* * * * *

"(l) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

* * * * *

"General Powers of Commission

"Sec. 303. Except as otherwise provided in this Act; the Commission from time to time, as public convenience, interest, or necessity requires, shall—

"(a) Classify radio stations;

"(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

"(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

* * * * *

"(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

* * * * *

"(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

"(h) Have authority to establish areas or zones to be served by any station;

"(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

"(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

"(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

* * * * *

"Applications for Licenses; Conditions in License for Foreign Communication

"Sec. 308 (a) * * *

"(b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

* * * * *

"Limitation on Holding and Transfer of Licenses

"Sec. 310. (a) The station license required hereby shall not be granted to or held by—

"(1) Any alien or the representative of any alien;

"(2) Any foreign government or the representative thereof;

"(3) Any corporation organized under the laws of any foreign government;

"(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

"(5) Any corporation directly or indirectly controlled by any other corporation of which any officer

or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

"Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

* * * * *

"Construction Permits

"Sec. 319. (a) * * *

"(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of

said station. Said license shall conform generally to the terms of said permit.

* * * * *

"False Distress Signals; Rebroadcasting; Studios of Foreign Stations

"Sec. 325. (a) * * *

"(b) No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

"(c) Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modifications thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the interest.

"Censorship; Indecent Language

"Sec. 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

* * * * *

"Reports of Investigations

"Sec. 404. Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

* * * * *"

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 429

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION, *Respondent*.

PETITION FOR REHEARING.

LOUIS G. CALDWELL,
REED T. ROLLO,
DONALD C. BELLAR,
PERCY H. RUSSELL, JR.,
Counsel for Respondent.

April 18, 1940.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 499

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

SANDERS BROTHERS RADIO STATION, *Respondent*.

PETITION FOR REHEARING.

Comes now Sanders Brothers Radio Station, respondent, and petitions this Honorable Court for a rehearing of the above-entitled cause, in which a decision was rendered on March 25, 1940 (Adv. Ops. Oct. Term, 1939, p. 606), or, in the alternative, for a modification of judgment as set forth below.

1.

This petition for rehearing is directed at the following portion of the Court's opinion:

> "*Third.* Examination of the findings and grounds of decision set forth by the Commission discloses that the findings were sufficient to comply with the requirements of the Act in respect of the public interest, con-

venience, or necessity involved in the issue of the permit. In any event, if the findings were not as detailed upon this subject as might be desirable, *the attack upon them is not that the public interest is not sufficiently protected but only that the financial interests of the respondent have not been considered.* We find no reason for abrogating the Commission's order for lack of adequate findings." (Italics supplied)

The Court, apparently relying on language loosely used in the opinion of the court below, has misconstrued respondent's contention and has overlooked the fact that from the outset respondent's attack upon the Commission's findings has, in substance, been with respect to the very issue which the Court's opinion states the Commission may not disregard.[1] The issue, couched in terms which, it is submitted, are the equivalent of those used by the Court (although not in the precise phraseology), has been consistently raised at every stage of the proceedings before the Commission and again before the lower court, including

a) respondent's petition to intervene before the Commission (R. 23),

b) respondent's counsel's opening statement at the beginning of the hearing (R. 35),

c) respondent's petition for rehearing before the Commission (R. 425-7, 464),

d) respondent's notice of appeal to the court below (R. 1-2), and

---

[1] "This is not to say that the question of competition between a proposed station and one operating under an existing license is to be entirely disregarded by the Commission; and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the applicant adequately to serve his public; it may indicate that both stations,—the existing and the proposed—will go under, with the result that a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field, both stations will be compelled to render inadequate service * * *". Opinion, pp. 4-5.

e) respondent's brief in this Court (see enumeration of questions presented on p. 2; Point I, beginning at p. 13, and particularly pp. 23-30).

Respondent has at no time urged that resulting economic injury to an existing station, in and of itself, and apart from considerations of public convenience, interest, or necessity, is an element which the Commission must weigh and as to which it must make findings. In its briefs, however, petitioner has persistently endeavored to ascribe such a contention to respondent but without foundation. Economic injury to respondent's station, in and of itself, *has* been relied upon by respondent solely as bringing respondent within the description of persons who may appeal under Sec. 402(b)(2) of the Communications Act and, in this respect, the Court has upheld respondent's view.

The Commission's decision (R. 408-16) contains no findings on the proper substantive issue as raised by respondent or as stated by this Court. Having duly raised the issue from the outset and on appeal having duly complained of the Commission's failure to make findings thereon, respondent is entitled to judicial review on the point.

As now construed by this Court, the decision of the court below fails to pass on the question properly brought before it for determination. Accordingly, it is submitted, the holding of this Court should be limited to the statement that the Commission's findings are adequate insofar as the question decided by the court below is concerned, and the cause should be remanded for further proceedings in conformity with this Court's opinion, *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, 80; *Marconi Wireless Telegraph Co. of America* v. *Simon*, 246 U. S. 46, 57; *Wm. Cramp & Sons Ship and Engine Building Co.* v. *International Curtis Marine Turbine Co.*, 228 U. S. 645, 651. This will permit consideration and review of respondent's contention as actually made.

2.

As an alternative, respondent requests that the judgment of this Court reversing the decision of the Court of Appeals be modified by directing that the cause be remanded for further proceedings in accordance with this Court's opinion, without prejudice to the right of respondent, by petition for rehearing or other appropriate motion, to seek and obtain review by the court below of the question of the adequacy of the Commission's findings on the issue as actually raised by respondent and recognized by this Court as proper for the Commission's determination. *The Federal Trade Commission* v. *Raladam Co.*, 76 L. ed. 1300 (not contained in the Official Reports).

3.

Respondent moves for a stay of the issuance of the mandate in the above-entitled caused pending final determination by this Court of this petition for rehearing.

WHEREFORE, respondent prays:

(1) That its petition for rehearing be granted with opportunity for argument and the filing of a brief on the issue of competition from the standpoint of public interest;

(2) That the above-quoted portion of the opinion of this Court be modified to show that respondent did raise below the issue which this Court holds the Commission may not disregard, and that this Court's approval of the Commission's findings be limited to the question of respondent's financial injury;

(3) In the alternative, that the judgment of this Court be modified to include instructions permitting respondent again to present, and the court below to review, the question of the adequacy of the Commission's findings on the issue of competition as it may affect public interest; and

(4) That the issuance of the mandate be stayed pending disposition of this petition for rehearing.

Respectfully submitted,

LOUIS G. CALDWELL,
REED T. ROLLO,
DONALD C. BEELAR,
PERCY H. RUSSELL, JR.,
Counsel for Respondent.

CERTIFICATE OF COUNSEL

It is hereby certified that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

LOUIS G. CALDWELL,
Counsel for Respondent.

April 18, 1940.

pp. 5+6

SUPREME COURT OF THE UNITED STATES.

No. 499.—October Term, 1939.

Federal Communications Commission, Petitioner, *vs.* Sanders Brothers Radio Station.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 25, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

We took this case to resolve important issues of substance and procedure arising under the Communications Act of 1934, as amended.[1]

January 20, 1936, the Telegraph Herald, a newspaper published in Dubuque, Iowa, filed with the petitioner an application for a construction permit to erect a broadcasting station in that city. May 14, 1936, the respondent, who had for some years held a broadcasting license for, and had operated, Station WKBB at East Dubuque, Illinois, directly across the Mississippi River from Dubuque, Iowa, applied for a permit to move its transmitter and studios to the last named city and to instal its station there. August 18, 1936, respondent asked leave to intervene in the Telegraph Herald proceeding, alleging in its petition, *inter alia*, that there was an insufficiency of advertising revenue to support an additional station in Dubuque and insufficient talent to furnish programs for an additional station; that adequate service was being rendered to the community by Station WKBB and there was no need for any additional radio outlet in Dubuque and that the granting of the Telegraph Herald application would not serve the public interest, convenience, and necessity. Intervention was permitted and both applications were set for consolidated hearing.

The respondent and the Telegraph Herald offered evidence in support of their respective applications. The respondent's proof showed that its station had operated at a loss; that the area proposed to be served by the Telegraph Herald was substantially the same as that served by the respondent and that, of the advertisers

[1] Act of June 19, 1934, c. 652, 48 Stat. 1064; Act of June 5, 1935, c. 511, 49 Stat. 1475; Act of May 20, 1937, c. 229, 50 Stat. 189; 47 U. S. C. 151, *et seq.*

relied on to support the Telegraph Herald station, more than half had used the respondent's station for advertising.

An examiner reported that the application of the Telegraph Herald should be denied and that of the respondent granted. On exceptions of the Telegraph Herald, and after oral argument, the broadcasting division of petitioner made an order granting both applications, reciting that "public interest, convenience, and necessity would be served" by such action. The division promulgated a statement of the facts and of the grounds of decision, reciting that both applicants were legally, technically, and financially qualified to undertake the proposed construction and operation; that there was need in Dubuque and the surrounding territory for the services of both stations, and that no question of electrical interference between the two stations was involved. A rehearing was denied and respondent appealed to the Court of Appeals for the District of Columbia. That court entertained the appeal and held that one of the issues which the Commission should have tried was that of alleged economic injury to the respondent's station by the establishment of an additional station and that the Commission had erred in failing to make findings on that issue. It decided that, in the absence of such findings, the Commission's action in granting the Telegraph Herald permit must be set aside as arbitrary and capricious.[2]

The petitioner's contentions are that under the Communications Act economic injury to a competitor is not a ground for refusing a broadcasting license and that, since this is so, the respondent was not a person aggrieved, or whose interests were adversely affected, by the Commission's action, within the meaning of Section 402(b) of the Act which authorizes appeals from the Commission's orders.

The respondent asserts that the petitioner in argument below contented itself with the contention that the respondent had failed to produce evidence requiring a finding of probable economic injury to it. It is consequently insisted that the petitioner is not in a position here to defend its failure to make such findings on the ground that it is not required by the Act to consider any such issue. By its petition for rehearing in the court below, the Commission made clear its position as now advanced. The decision of the court below, and the challenge made in petition for rehearing and here

[2] Sanders Brothers Radio Station v. Federal Communications Commission, 106 F. (2d) 321.

by the Commission, raise a fundamental question as to the function and powers of the Commission and we think that, on the record, it is open here.

First. We hold that resulting economic injury to a rival station is not in and of itself, and apart from considerations of public convenience, interest, or necessity, an element the petitioner must weigh and as to which it must make findings in passing on an application for a broadcasting license.

§ 307(a) of the Communications Act directs that "the Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act." This mandate is given meaning and contour by the other provisions of the statute and the subject matter with which it deals.[3] The Act contains no express command that in passing upon an application the Commission must consider the effect of competition with an existing station. Whether the Commission should consider the subject must depend upon the purpose of the Act and the specific provisions intended to effectuate that purpose.

The genesis of the Communications Act and the necessity for the adoption of some such regulatory measure is a matter of history. The number of available radio frequencies is limited. The attempt by a broadcaster to use a given frequency in disregard of its prior use by others, thus creating confusion and interference, deprives the public of the full benefit of radio audition. Unless Congress had exercised its power over interstate commerce to bring about allocation of available frequencies and to regulate the employment of transmission equipment the result would have been an impairment of the effective use of these facilities by anyone. The fundamental purpose of Congress in respect of broadcasting was the allocation and regulation of the use of radio frequencies by prohibiting such use except under license.

In contradistinction to communication by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission,[4] the Act recognizes that broadcasters are not common carriers and

[3] Radio Commission v. Nelson Bros. Co., 289 U. S. 266, 285.

[4] See Title II, §§ 201-221, 47 U. S. C. §§ 201-221.

are not to be dealt with as such.[5] Thus the Act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads,[6] in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts. That such ability may be assured the Act contemplates inquiry by the Commission, *inter alia*, into an applicant's financial qualifications to operate the proposed station.[7]

But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel.

The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license. Licenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed. Thus the channels presently occupied remain free for a new assignment to another licensee in the interest of the listening public.

Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public. Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public.

This is not to say that the question of competition between a proposed station and one operating under an existing license is to

[5] See § 3(h), 47 U. S. C. § 153(h).

[6] Compare Texas & Pacific Ry. v. Gulf, etc. Ry., 270 U. S. 266, 277; Chicago Junction Case, 264 U. S. 258.

[7] See § 308(b), 47 U. S. C. § 308(b).

be entirely disregarded by the Commission, and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the applicant adequately to serve his public; it may indicate that both stations,—the existing and the proposed—will go under, with the result that a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field, both stations will be compelled to render inadequate service. These matters, however, are distinct from the consideration that, if a license be granted, competition between the licensee and any other existing station may cause economic loss to the latter. If such economic loss were a valid reason for refusing a license this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the Act itself expressly negatives,[8] which Congress would not have contemplated without granting the Commission powers of control over the rates, programs, and other activities of the business of broadcasting.

We conclude that economic injury to an existing station is not a separate and independent element to be taken into consideration by the Commission in determining whether it shall grant or withhold a license.

Second. It does not follow that, because the licensee of a station cannot resist the grant of a license to another, on the ground that the resulting competition may work economic injury to him, he has no standing to appeal from an order of the Commission granting the application.

§ 402(b) of the Act provides for an appeal to the Court of Appeals of the District of Columbia (1) by an applicant for a license or permit, or (2) "by any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application."

The petitioner insists that as economic injury to the respondent was not a proper issue before the Commission it is impossible that § 402(b) was intended to give the respondent standing to appeal, since absence of right implies absence of remedy. This view would deprive subsection (2) of any substantial effect.

Congress had some purpose in enacting § 402(b)(2). It may have been of opinion that one likely to be injured by the issue of a

financially

[8] See § 311, 47 U. S. C. § 311, relating to unfair competition and monopoly.

license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. In this view, while the injury to such person would not be the subject of redress, that person might be the instrument upon an appeal, of redressing an injury to the public service which would otherwise remain without remedy. It is within the power of Congress to confer such standing to prosecute an appeal.[9]

We hold, therefore, that the respondent had the requisite standing to appeal and to raise, in the court below, any relevant question of law in respect of the order of the Commission.

Third. Examination of the findings and grounds of decision set forth by the Commission discloses that the findings were sufficient to comply with the requirements of the Act in respect of the public interest, convenience, or necessity involved in the issue of the permit. In any event, if the findings were not as detailed upon this subject as might be desirable, the attack upon them is not that the public interest is not sufficiently protected but only that the financial interests of the respondent have not been considered. We find no reason for abrogating the Commission's order for lack of adequate findings.

Fourth. The respondent here renews a contention made in the Court of Appeals to the effect that the Commission used as evidence certain data and reports in its files without permitting the respondent, as intervenor before the Commission, the opportunity of inspecting them. The Commission disavows the use of such material as evidence in the cause and the Court of Appeals has found the disavowal veracious and sufficient. We are not disposed to disturb its conclusion.

The judgment of the Court of Appeals is reversed.

Mr. Justice McREYNOLDS took no part in the decision of this case.

---

[9] Compare Interstate Commerce Commission *v.* Oregon-Washington R. Co., 288 U. S. 14, 23-25.